154-421

RECORD, CASE No. 15,299.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

TERM No., ~~1299~~. 99

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

VICTOR M. BACKUS, AS TREASURER OF MARION COUNTY, INDIANA, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

FILED FEBRUARY 27, 1903.

RECORD, CASE No. 15,269.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No., 1299.

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IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

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1 THE STATE OF INDIANA:

In the Supreme Court.

Be it remembered that heretofore, to wit, on the 15th day of December, 1892, the same being the 16th judicial day of the November term of said court, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, by Butler, Snow and Butler and S. O. Pickens, S. Stansifer, and John L. Rupe, its attorneys and counsel, filed in the office of the clerk of the supreme court of the State of Indiana a transcript of the record and proceedings of the Marion superior court and of the Marion circuit court of said State in a cause wherein said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company was plaintiff and Victor M. Backus, treasurer of Marion county, *et al.* were defendants, together with an assignment of error endorsed thereon; which transcript and assignment of errors is in the words and figures following, to wit:

2 Be it remembered that among the records of proceedings had, papers filed, motions decided, rulings made, exceptions noted, judgments rendered, decrees entered, &c., in the circuit court of the county of Marion, State of Indiana, are the following in the cause of—

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS, Treasurer, and Others. } No. 6215. Marion Circuit Court.

And be it also remembered that heretofore, to wit, on the 17th day of June, 1892, there was filed in the office of the clerk of the circuit court a transcript of proceedings had and papers filed in the superior court of the said county in the words and figures following—that is to say:

3 Be it remembered that among the records of proceedings had, papers filed, motions decided, rulings made, exceptions noted, judgments rendered, decrees entered, &c., in the superior court of the county of Marion, State of Indiana, are the following in the cause of—

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS, Treasurer, and Others. } Transcript. No. 43365.

And be it also remembered that afterwards, to wit, on the 19th day of April, A. D. 1892, the above-named plaintiff, by its counsel, filed in the office of the clerk of the said superior court its complaint as against the aforesaid defendants in the words and figures following, viz:

4 In the Superior Court of Marion County, Room No. 3.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, Thomas McCay, Simeon S. Bosserman, Allen W. Reynolds, Andrew O. Castleman, Joseph D. Vurpillar, Charles L. Woll, E. B. Thomas, George W. Hoffman, H. F. Small, Hiram A. B. Moorhous, George Burkit, Daniel Boshour, E. B. Dibbell, J. R. Casti, Marcus H. Hemphill, G. B. Clark, Samuel A. Martindale, Amos A. Covalt, W. A. Markland, James K. Armstrong, A. F. Swoveland, William C. Barnard, Thomas E. Valentine, Frank McCollough, William Dark, William J. May, A. L. Bateman, Richard Carter, William Wiseman, Frank Brodhicker, E. Hahlbrand, Hugh Colvin, John A. Jenkins, W. B. Veasey, Levi H. Scott, Jacob Best, Daniel H. Demaree, L. M. Robinson, Charles B. Curtis, A. E. Rust, D. Reeder, Jacob H. Thomas, Robert Montgomery, Thomas A. Jones, Paul Kerr, William N. Young, William P. Cook, Martin L. Stratton, M. C. Jay, John Hayes, I. W. St. John, George W. Veal, William N. McCullough, John G. Grahs, Albert W. Saint, John R. Page, William A. Fulton, Azro H. Wilkinson, C. E. Hiatt, Joseph H. Parker, M. McCrae, John P. McGeath.

No. 43365. Bill of Complaint for Perpetual Injunction.

5 The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company complains of Victor M. Backus, as treasurer of Marion county, Indiana; J. B. Brewer, whose full Christian name is to plaintiff unknown, as treasurer of Southport, Marion county, Indiana; Thomas McCay, as treasurer of Lake county, Indiana; Simeon S. Bosserman, as treasurer of La Porte county, Indiana; Allen W. Reynolds, as treasurer of Porter county, Indiana; Andrew O. Castleman, as treasurer of Starke county, Indiana; Joseph D. Vurpillar, as treasurer of Pulaski county, Indiana; Charles L. Woll, as treasurer of Cass county, Indiana; E. B. Thomas, whose full Christian name is to plaintiff unknown, as treasurer of Royal Centre, Cass county, Indiana; George W. Hoffman, as treasurer of the city of Logansport, Cass county, Indiana; H. F. Small, whose full Christian name is to plaintiff unknown, as treasurer of Walton, Cass

county, Indiana; Hiram A. B. Moorhous, as treasurer of White county, Indiana; George Burkit, as treasurer of Burnettsville, White county, Indiana; Daniel Boshour, as marshal of Monticello, White county, Indiana; E. B. Dibble, whose full Christian name is to plaintiff unknown, as treasurer of Walcott, White county, Indiana; J. R. Casti, whose full Christian name is to plaintiff unknown, as marshal of Reynolds, White county, Indiana; Marcus H. Hemphill, as county treasurer of Jasper county, Indiana; G. B. Clark, whose full Christian name is to plaintiff unknown, as treasurer of Remington, Jasper county, Indiana; Samuel A. Martindale, as county treasurer of Newton county, Indiana; Amos A. Covalt, as treasurer of Howard county, Indiana; W. A. Markland, whose full Christian name is to plaintiff unknown, as treasurer of the city of Kokomo, Howard county, Indiana; James K. Armstrong, as treasurer of Tipton county, Indiana; A. F. Swoveland, whose full Christian name is to plaintiff
6 unknown, as treasurer of Windfall, Tipton county, Indiana; William C. Barnard, as treasurer of Hancock county, Indiana; Thomas E. Valentine, as treasurer of Johnson county, Indiana; Frank McCollough, as treasurer of Franklin, Johnson county, Indiana; Wiiliam Dark, as marshal of Edinburgh, Johnson county, Indiana; William J. May, as treasurer of Bartholomew county, Indiana; A. L. Bateman, whose full Christian name is to plaintiff unknown, as treasurer of Elizabethtown, Bartholomew county, Indiana; Richard Carter, as treasurer of the city of Columbus, Bartholomew county, Indiana; William Wiseman, as treasurer of Jonesville, Bartholomew county, Indiana; Frank Brodhicker, as county treasurer of Jackson county, Indiana; E. Hahlbrand, whose full Christian name is to plaintiff unknown, as treasurer of Seymour, Jackson county, Indiana; Hugh Colvin, as treasurer of Scott county, Indiana; John A. Jenkins, as treasurer of Clark county, Indiana; W. B. Veasey, whose full Christian name is to plaintiff unknown, as treasurer of the city of Jeffersonville, Clark county, Indiana; Levi H. Scott, as treasurer of Floyd county, Indiana; Jacob Best, as treasurer of the city of New Albany, Floyd county, Indiana; Daniel H. Demaree, as treasurer of Jefferson county, Indiana; L. M. Robinson, whose full Christian name is to plaintiff unknown, as treasurer of the city of Madison, Jefferson county, Indiana; Charles B. Curtis, as treasurer of Jennings county, Indiana; A. E. Rust, whose full Christian name is to plaintiff unknown, as marshal of Vernon, Jennings county, Indiana; D. Reeder, whose full Christian name is to plaintiff unknown, as treasurer of the city of North Vernon, Jennings county, Indiana; Jacob H. Thomas, as treasurer of Shelby county, Indiana; Robert Montgomery, as treasurer of the city of Shelbyville, Shelby county, Indiana; Thomas A. Jones, as treasurer of Rush county, Indiana; Paul Kerr, as treasurer of the city of Rushville, Rush county, Indiana; William N. Young, as
7 treasurer of Fayette county, Indiana; William P. Cook, as treasurer of Wayne county, Indiana; Martin L. Stratton, as treasurer of the city of Richmond, Wayne county, Indiana; M. C. Jay, whose full Christian name is to plaintiff unknown, as tax col-

lector of Cambridge City, Wayne county, Indiana; John Hayes, as treasurer of Jay county, Indiana; I. W. St. John, whose full Christian name is to plaintiff unknown, as treasurer of Dunkirk, Jay county, Indiana; George W. Veal, as treasurer of Randolph county, Indiana; William N. McCullough, as marshal of Ridgeville, Randolph county, Indiana; John G. Grafis, as treasurer of Union City, Randolph county, Indiana; Albert W. Saint, as treasurer of Henry county, Indiana; John R. Page, as treasurer of Madison county, Indiana; William A. Fulton, as treasurer of the city of Anderson, Madison county, Indiana; Azro H. Wilkinson, as treasurer of Miami county, Indiana; C. E. Hiatt, whose full Christian name is to plaintiff unknown, as treasurer of Xenia, Miami county, Indiana; Joseph H. Parker, as treasurer of Grant county, Indiana; M. McCrae, whose full Christian name is to plaintiff unknown, as treasurer of the city of Marion, Grant county, Indiana; John P. McGeath, as treasurer of Blackford county, Indiana, and avers—

That the plaintiff is a corporation created by the consolidation of separate corporations organized under the statutes of the States of Pennsylvania, Ohio, Indiana, and Illinois respectively; that plaintiff, as such corporation, owns and operates lines of railway extending from Pittsburgh, Pennsylvania, via Richmond, Indiana, to Indianapolis, Jeffersonville, and Madison, in said State of Indiana, and extending from said city of Pittsburgh, Pennsylvania, via Logansport, Indiana, to Chicago, Illinois, and also extending from Richmond, Indiana, via Kokomo and Logansport, to said city of Chicago.

8 That the lines of railway of plaintiff within the State of Indiana extend through or into the following-named counties, cities, and towns, to wit: The counties of Marion, Lake, La Porte, Porter, Starke, Pulaski, Cass, White, Jasper, Newton, Howard, Tipton, Hancock, Johnson, Bartholomew, Jackson, Scott, Clark, Floyd, Jefferson, Jennings, Shelby, Rush, Fayette, Wayne, Jay, Randolph, Henry, Madison, Miami, Grant, and Blackford, and the following cities and towns, to wit: Indianapolis, Southport, Royal Centre, Logansport, Walton, Burnettsville, Monticello, Walcott, Reynolds, Remington, Kokomo, Windfall, Elizabethtown, Franklin, Edinburgh, Columbus, Jonesville, Seymour, Jeffersonville, New Albany, Madison, Vernon, North Vernon, Shelbyville, Rushville, Richmond, Cambridge City, Dunkirk, Ridgeville, Union City, Anderson, Xenia, and Marion.

That by the act of the legislature of the State of Indiana entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency," approved March 6, 1891, the corporate property of plaintiff within the State of Indiana is divided into four separate and distinct classes for the purpose of assessment, valuation, and taxation, to wit:

1. All personal property other than that denominated by said statute "railroad track" and "rolling stock," including tools and materials for repairs, fixtures, and stationary engines. Property of this class is by said statute required to be listed, assessed, and valued for taxation by the local assessing officers having local jurisdiction

where said property may be situated, namely, township and county assessors and county boards of review.

2. All real estate of railroad corporations other than that denominated by said statute "railroad track" and rights of way, with all the improvements thereon, is by said statute required to be listed, assessed, and valued for taxation as other lots, lands, and improvements are listed, assessed, and valued in the county, township, town, or city where the same are located. This class of property is also by said statute required to be listed, assessed, and valued for taxation by the local assessing officers, namely, township and county assessors and county boards of review.

3. The rights of way, including superstructures, main, side, or second tracks and turnouts, turn-tables, telegraph poles, wires, instruments, and other appliances, and the stations and improvements of railroad corporations on their rights of way, excepting machinery, stationary engines, and other fixtures, are by said statute held to be real estate for the purpose of taxation and are designated "railroad track."

4. Operating equipment of railroad corporations, consisting of locomotives and tenders, passenger, freight, mail, express, and baggage cars and equipment and cars and equipment of all kinds used in the operation of railroads are by said statute held to be personal property and are designated, for the purpose of taxation, "rolling stock."

That by the provisions of said statute the owners of all real estate and personal property in the State of Indiana, excepting only railroad corporations as to their property denominated "railroad track" and "rolling stock," are granted the jurisdiction of township assessors, county assessors, and county boards of review in the matter of the assessment and valuation of their real estate and personal property for taxation; that the owners and representatives of all property subject to assessment and valuation for taxation by said local assessing officers are by said statute required to have notice of any proposed change in the listing, assessment, and valuation of their property for taxation, as listed and valued by the owners or representatives thereof, either by the township assessor or the county assessor or the county board of review, and are by said statute granted a full hearing before either or all of said local assessing officers and authorities as to any change, addition to, or increase of the listing, assessment, and valuation of their property as made by said owners and representatives thereof; that in the event that the owners or representatives of any property subject to taxation in said State of Indiana, excepting only the property of railroad corporations denominated "railroad track" and "rolling stock," are dissatisfied with the assessment and valuation of their property by said local assessing officers and authorities or either of them, they are granted by said statute the right of appeal from the county board of review to the State board of tax commissioners.

That as to the assessment and valuation for taxation of the two

classes of corporate property denominated "railroad track" and "rolling stock" railroad corporations, including plaintiff, are denied the jurisdiction of township assessors, county assessors, and county boards of review, and are denied any right of appeal from the decisions of the county boards of review to the State board of tax commissioners.

That by the provisions of said statute the corporate property of railroad corporations denominated "railroad track" and "rolling stock," including the corporate property of plaintiff, is singled out and separated from all other property of the State of Indiana for the purpose of assessment and valuation for taxation and is, under the provisions and requirements of said statute, assessed and valued for taxation by a distinct, separate, discriminating, and unequal method of assessment and valuation from any and all other property subject to taxation in said State of Indiana.

That the separate, distinct, discriminating, and uniform method of assessment and valuation for taxation of the two classes of corporate property of railroad corporations denominated "railroad track" and "rolling stock," as provided and required by said
11 statute, of necessity results in an ununiform and unequal rate of assessment and taxation of said two classes of the corporate property of railroad corporations as compared with all other property subject to taxation in said State of Indiana.

That by the provisions of said statute no notice whatever is required to be given to any railroad corporation or to the lessee of any line of railway within said State of Indiana as to the time and place when and where its corporate property denominated "railroad track" and "rolling stock" will be assessed and valued for taxation. No right whatever is by said statute granted or reserved to railroad corporations or to the lessee and possessor of railway property to be heard regarding the final assessment and valuation of the said two classes of their corporate property; and said State board of tax commissioners, hereinafter described, is not, by said statute, required to hear railroad corporations or representatives of railway property regarding the assessment and valuation of the said two classes of their corporate property, even upon voluntary application to be heard regarding the assessment and valuation of their "railroad track" and "rolling stock."

That by section 117 of said act of March 6, 1891, the governor, secretary of state, and auditor of state, together with two persons appointed by the governor, are constituted a board denominated the State board of tax commissioners; that by section 129 of said statute the State board of tax commissioners is required to meet at the office of the auditor of state on the first Monday of August, each year, "for the purpose of assessing railroad property and equalizing the assessment of real estate;" but no special notice, either by publication or otherwise, is required regarding said time and place of meeting; that by section 137 of said statute the State board of tax commissioners is required to assess the railroad
12 property denominated "railroad track" and "rolling stock," the requirement being in the words following, to wit:

"Said board shall also assess the railroad property denominated in this act as 'railroad track' and 'rolling stock' at its true cash value, and said board is hereby given the power and authority, by committee or otherwise, to examine persons and papers;" that by section 125 of said statute the State board of tax commissioners is required to hear and determine appeals from the decision of any county board of review, the requirement being in the words following, to wit: "Appeals shall lie from the decision of any county board of review to the State board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor."

That by the provisions of said statute the owners and representatives of all property subject to taxation, excepting only the owners and representatives of "railroad track" and "rolling stock," as to the assessment and valuation of their property for taxation are granted and have reserved to them the right of appeal from the decision of the county boards of review to the State board of tax commissioners, and the right upon such appeal to a full hearing before said State board of tax commissioners; but that railroad corporations and the representatives of railway companies and railway property as to the assessment and valuation of their corporate property denominated "railroad track" and "rolling stock" are, by said statute, denied the jurisdiction of the local assessing officers and authorities, are deprived of the right of appeal to the State board of tax commissioners, are deprived of the right to have any notice given to them of the time and place when and where their "railroad track" and "rolling stock" will be finally assessed and valued for taxation, and are denied
13 the right to be heard before said State board of tax commissioners regarding the final assessment and valuation of their "railroad track" and "rolling stock," either with or without notice.

That the assessment and valuation of the "railroad track" and "rolling stock" of plaintiff in the several counties in Indiana through or into which lines of railway of plaintiff extend for the year 1890, as made by the duly constituted authorities of the State of Indiana, is as follows:

Total in Marion county	$402,774 00
Total in Lake county	304,526 00
Total in La Porte county	92,892 00
Total in Porter county	212,406 00
Total in Starke county	117,612 00
Total in Pulaski county	288,587 00
Total in Cass county	753,126 00
Total in White county	366,375 00
Total in Jasper county	118,138 00
Total in Newton county	188,403 00
Total in Howard county	197,949 00
Total in Tipton county	155,767 00

Total in Hancock county	$254,233 00
Total in Johnson county	309,695 00
Total in Bartholomew county	444,606 00
Total in Jackson county	273,417 00
Total in Scott county	169,819 00
Total in Clark county	540,337 00
Total in Floyd county	45,809 00
Total in Jefferson county	109,286 00
Total in Jennings county	133,474 00
Total in Shelby county	131,819 00
Total in Rush county	133,463 00
Total in Fayette county	52,308 00
Total in Wayne county	698,462 00
Total in Jay county	131,951 00
Total in Randolph county	219,019 00
Total in Henry county	601,338 00
14 Total in Madison county	312,023 00
Total in Miami county	242,015 00
Total in Grant county	351,147 00
Total in Blackford county	185,277 00
Making the total amount of the entire valuation of said "railroad track" and "rolling stock" of plaintiff in Indiana for the year 1890	$8,538,053 00

Which assessment and valuation, plaintiff avers, was and is a full assessment and valuation of the true cash value of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana.

That the true cash value of the said "railroad track" and "rolling stock" of plaintiff within the State of Indiana was no greater for the year 1891 than it was for the year 1890.

That said State board of tax commissioners, on or about September 8, 1891, made the following pretended assessment and valuation of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana, to wit:

Total in Marion county	$863,270 00
Total in Lake county	759,970 00
Total in La Porte county	233,330 00
Total in Porter county	530,760 00
Total in Starke county	295,325 00
Total in Pulaski county	725,255 00
Total in Cass county	1,799,310 00
Total in White county	922,175 00
Total in Jasper county	303,535 00
Total in Newton county	467,370 00
Total in Howard county	490,360 00
Total in Tipton county	392,085 00
Total in Hancock county	636,450 00
Total in Johnson county	747,035 00

	Total in Bartholomew county	$1,450,145 00
15	Total in Jackson county	666,325 00
	Total in Scott county	413,545 00
	Total in Clark county	1,015,370 00
	Total in Floyd county	89,350 00
	Total in Jefferson county	533,405 00
	Total in Jennings county	723,005 00
	Total in Shelby county	707,285 00
	Total in Rush county	708,635 00
	Total in Fayette county	284,460 00
	Total in Wayne county	1,774,280 00
	Total in Jay county	327,285 00
	Total in Randolph county	547,010 00
	Total in Henry county	1,515,095 00
	Total in Madison county	786,125 00
	Total in Miami county	603,635 00
	Total in Grant county	889,640 00
	Total in Blackford county	465,645 00
	Making the total pretended assessment and valuation of the "railroad track" and "rolling stock" of plaintiff within the limits of the State of Indiana, as made by said State board of tax commissioners, in September, 1891, the sum of	$22,666,470 00

That said pretended assessment and valuation so made by said State board of tax commissioners was not and is not the "true cash value" of the "railroad track" and "rolling stock" of plaintiff within the limits of the State of Indiana, and does not truly and justly represent the true cash value thereof as measured either by its cost of construction, rights of way, and railway tracks, lands, materials, equipment, and "rolling stock," or as measured by the gross or net earnings of said lines of railway within the State of Indiana or by the market value or actual value of the stocks and bonds of said Pittsburgh, Cincinnati, Chicago and St. Louis
16 Railway Company; but, on the contrary, said pretended assessment and valuation is manifestly exorbitant, unjust, and inequitable, and does not represent the true cash value of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana, as required by the provisions of said act of March 6, 1891.

That in making said assessment and valuation for taxation of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana said State board of tax commissioners, as plaintiff is informed and believes and upon information and belief avers the fact to be, did not make any personal inspection or examination of said "railroad track" and "rolling stock" for the purpose of ascertaining the true cash value thereof, as required by said statute, and did not summon before it or examine under oath persons acquainted with said "railroad track" and "rolling stock" and competent to testify to the true cash value thereof, but, on the con-

trary, made said assessment and valuation for taxation without personal inspection or examination and without the testimony of experts or persons competent to assess the value of said "railroad track" and "rolling stock" at the true cash value thereof.

That said State board of tax commissioners did not give to plaintiff or to any officer, agent, or attorney of plaintiff any notice whatever of the assessment and valuation of said "railroad track" and "rolling stock" which it had made or which it had determined upon and intended to make, and did not give to plaintiff or to any officer, agent, or attorney of plaintiff any hearing or opportunity to be present or to be heard by said State board of tax commissioners against said assessment and valuation of said "railroad track" and "rolling stock" or for the correction of errors in said assessment and valuation after said assessment and valuation was made or determined upon by said State board of tax commissioners, and that plaintiff did not know and had no means of knowing the amount of said assessment and valuation until after the
17 final adjournment of said State board of tax commissioners, and had no notice of said assessment and valuation or opportunity to be heard against said assessment and valuation of said "railroad track" and "rolling stock" of plaintiff; that the printed proceedings of said State board of tax commissioners for the year 1891 show that there are seventy-one railroad corporations having property in Indiana subject to taxation; that no assessments and valuations of railroad property were finally determined upon and made by said State board of tax commissioners prior to September 8, 1891, and that said State board of tax commissioners finally adjourned on September 11, 1891—that being the last day said board could remain in session under said statute—without giving plaintiff or any officer, agent, or attorney of plaintiff any notice whatever of its said assessment and valuation, and without giving plaintiff any hearing or opportunity to be heard touching said assessment and valuation for taxation of its "railroad track" and "rolling stock."

That in making said assessment and valuation for taxation of the "railroad track" of plaintiff within the limits of the State of Indiana said State board of tax commissioners did not consider, assess, and value said "railroad track" and determine the true cash value thereof, either as measured by the cost of construction, right of way, lands, and materials of and pertaining to said "railroad track" within the limits of Indiana, or as measured by the entire net earnings of plaintiff's lines of railway both within and without said State of Indiana, which plaintiff avers is not a fair, just, or equitable measure of the true cash value of said "railroad track" within the limits of the State of Indiana, or as measured by the market value or the actual value of the stock and bonds of plaintiff corporation, which plaintiff avers is not a fair, just, or equitable measure of the true cash value of said "railroad track" within the limits of
18 the State of Indiana, or by a consideration of said three supposed measures of the true cash value combined; but, on the contrary, said State board of tax commissioners, regardless of the cost of construction, right of way, lands, and materials of said "railroad

track" within the boundaries of Indiana, regardless of the net earnings of plaintiff upon said "railroad track" within the boundaries of Indiana, and regardless of the market or actual value of such a proportion of the stocks and bonds of plaintiff corporation as the true cash value of the said "railroad track" within the State of Indiana bears to the true cash value of the "railroad track" of plaintiff corporation within the limits of other States, made said assessment and valuation for taxation of the "railroad track" of plaintiff within the limits of the State of Indiana by wrongfully, fictitiously, and arbitrarily importing and assigning to the said "railroad track" within the boundaries of Indiana large increments of value belonging and pertaining wholly and solely to the "railroad track" of plaintiff situated in other States and duly taxed in said other States; that the entire length of the lines of railway of plaintiff corporation is 1,144.47 miles of main "railroad track," of which 647.42 miles are within the State of Indiana; that about twenty-five miles of said "railroad track" of plaintiff are situated in the State of Illinois, of which about fifteen miles are within the limits of the city of Chicago; that plaintiff has large and valuable terminal facilities in said city of Chicago worth many millions of dollars.

That the "true cash value" of the twenty-five miles of the "railroad track" of plaintiff situated in Illinois, together with said terminal facilities, is more than five times as much as the "true cash value" of any twenty-five miles of the said "railroad track" of plaintiff within the State of Indiana.

That all of said "railroad track" and terminal facilities of
19 plaintiff situated in Illinois are fully taxed in said State of Illinois; that plaintiff also has about three miles of "railroad track" and valuable terminal facilities in the cities of Allegheny and Pittsburgh, in the State of Pennsylvania, worth many millions of dollars; that said three miles of said "railroad track" in said cities of Allegheny and Pittsburgh, together with said terminal facilities, are worth far more than five times as much as any three miles of the "railroad track" of plaintiff situated in the State of Indiana; that said "railroad track" and terminal facilities last above mentioned are fully taxed in the State of Pennsylvania; that plaintiff has not and does not possess any such costly and valuable "railroad track" and terminal facilities within the State of Indiana as the said "railroad track" and terminal facilities in the State of Illinois and city of Chicago and said "railroad track" and terminal facilities in said cities of Allegheny and Pittsburgh, Pennsylvania; that the result of the action of said State board of tax commissioners in thus wrongfully and arbitrarily importing and assigning to the "railroad track" of plaintiff situated within the limits of Indiana large values that do not belong or pertain to said "railroad track," but do belong and pertain wholly and solely to the property and "railroad track" of plaintiff situated in other States and fully taxed in said other States, is the double taxation of the said "railroad track" of plaintiff in the State of Indiana, simply because plaintiff is the owner of valuable "railroad track" and property in other States, which is fully taxed in said other States.

That in making said assessment and valuation of the "rolling stock" of plaintiff in Indiana said State board of tax commissioners wrongfully and arbitrarily and unlawfully assigned to and assessed against plaintiff corporation as pertaining to its railway in Indiana a very large amount and valuation of "rolling stock" which does not belong or pertain to plaintiff's railway in Indiana and is never used or operated in or through said State of Indiana, but is procured for use in and is wholely and solely used and operated in other States and not in connection with the business and traffic of, over, or upon plaintiff's lines of railway within the State of Indiana.

That in and adjacent to the city of Chicago plaintiff has a very large and valuable equipment of "rolling stock," used and operated wholly and solely in urban and suburban traffic and transportation in and near to said city of Chicago and wholly and solely used and operated in the State of Illinois, and no part of which is ever used or operated upon or over plaintiff's lines of railway in Indiana or any part thereof, which said "rolling stock" is fully taxed in said State of Illinois.

That in and adjacent to the cities of Allegheny and Pittsburgh, Pennsylvania, plaintiff has large and valuable equipment of "rolling stock" used and operated wholly and solely in urban and suburban traffic and transportation in and near to said cities, and no part of which is ever used or operated upon or over the lines of railway of plaintiff in Indiana or any part thereof, which said "rolling stock" is fully taxed in said State of Pennsylvania; that in the State of Ohio plaintiff has a very large and valuable equipment of "rolling stock," used and operated wholly and solely in the State of Ohio, in the transportation of coal, ores, and minerals from and to points in the said State of Ohio, and no part of which "rolling stock" is ever used or operated upon or over the lines of railway of plaintiff in the State of Indiana, which said "rolling stock" is fully taxed in said State of Ohio; that plaintiff has not and does not use or operate any such like separate and distinct equipments and "rolling stock," either for urban or suburban traffic and transportation or for special transportation of coal, ores, and minerals from and to points wholly within the said State of Indiana, but that the entire traffic and transportation on the lines of railway of plaintiff within the State of Indiana is confined wholly to the ordinary local and interstate traffic and transportation over and upon plaintiff's said lines of railway; that in said assessment and valuation said State board of tax commissioners has valued and assessed for taxation in the State of Indiana the "rolling stock" and equipment of plaintiff corporation procured for use in and wholly and solely used and operated in said States of Illinois, Pennsylvania, and Ohio, and never used or operated upon or over the lines of railway of plaintiff situated in the State of Indiana, all of which said "rolling stock" and equipment is fully taxed in said States of Illinois, Pennsylvania, and Ohio, where the same is wholly and only used and operated by plaintiff; that said action of said State board of tax commissioners has, therefore, resulted in the double taxation of a very large por-

tion of the "rolling stock" and equipment of plaintiff corporation; that if it be true that said act of March 6, 1891, purports to grant power and authority to said State board of tax commissioners to assess and value for taxation, in the State of Indiana, "rolling stock" and personal property not within the said State of Indiana, then, in that case, said statute is unconstitutional and void because it is an attempt upon the part of the legislature of Indiana to tax property beyond the jurisdiction of and without and beyond the boundaries of said State of Indiana.

That said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff in Indiana is unjust, unequal, unlawful, and void, and does not represent the "true cash value" thereof, as required by said statute, and that said assessment and valuation consists very largely of fictitious and arbitrary values imported and assigned to said "railroad track" and "rolling stock" in Indiana, which values never existed in or pertained or belonged to said "railroad track" and "rolling stock" in said State of Indiana.

22 That said assessment and valuation was made by said State board of tax commissioners on the wrongful, arbitrary, fictitious, and unlawful basis and supposition that the true cash value of every mile of the "railroad track" of plaintiff within the limits of Indiana is precisely the same amount and value as any mile of the entire railway of plaintiff outside of the State of Indiana, which plaintiff avers is not true; that the assessment and valuation of the "rolling stock" of plaintiff was made on the wrongful, arbitrary, fictitious, and unlawful basis and supposition that plaintiff uses upon its lines of railway in Indiana the same proportion and value of "rolling stock" that the number of miles of plaintiff's railway in Indiana bears to the number of miles of the entire railway of plaintiff both within and without said State of Indiana, which plaintiff avers is not true; that this wrongful, arbitrary, fictitious, and unlawful method of importing and assigning to the "railroad track" and "rolling stock" of plaintiff in Indiana values belonging wholly and solely to the property of plaintiff in other States has resulted in an assessment and valuation of plaintiff's said property so grossly unjust and inequitable as to amount to a legal fraud upon the rights of plaintiff.

That the unequal, inequitable, unlawful, and unjust character of said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana is conclusively proven by the comparison of said assessment and valuation with the assessments and valuations made by said State board of tax commissioners of other like "railroad track" and "rolling stock" of other railroad corporations.

For example, the assessment and valuation for taxation of the "railroad track" and "rolling stock" of plaintiff in Indiana as made by said State board of tax commissioners at its session in 1891 is as follows: Main track, per mile, $28,500; second track, per

23 mile, $8,000; side track, per mile, $4,500; "rolling stock," per mile, $5,000, making the total valuation of said "railroad track" and "rolling stock" in Indiana $35,014 per mile. The

gross earnings of plaintiff's railway in Indiana per mile were $13,392.91; net earnings per mile, in Indiana, $3,533.29. Comparing the assessment and valuation of the main track of plaintiff's railway in Indiana and the net earnings per mile of plaintiff's railway in Indiana with the assessment and valuation of the main track of the Evansville and Terre Haute railroad and the net earnings per mile of said last-mentioned company, the following gross inequalities appear, to wit: Assessment and valuation of plaintiff's main track, per mile, $28,500; assessment and valuation of the main track of the Evansville & Terre Haute railroad, per mile, $16,400; net earnings of plaintiff's railway, per mile, $3,533.29; net earnings of Evansville & Terre Haute railroad, per mile, $3,196.70. It is perfectly apparent that there is no correspondence whatever and no equality whatever in the assessments and valuations of these two railroads respectively, and that there is no equality or correspondence between the assessments of these two railroads respectively and their respective net earnings per mile. With a difference of less than ten per cent. in the net earnings per mile, the assessment and valuation of the main track of plaintiff's railway is $12,100 per mile more than the assessment and valuation of the main track of the Evansville & Terre Haute railroad, which results in an unjust and inequitable discrimination against plaintiff of at least seventy-five per cent. increase of assessment and valuation over and above the assessment and valuation per mile of the Evansville & Terre Haute railroad, with less than ten per cent. increase in net earnings.

Again, no dividends have been paid for many years upon the common stock of plaintiff's corporation, while the stock of
24 the Terre Haute & Indianapolis Railroad Company has received 6 per cent. dividends regularly and without failure for many years; and yet the main track of the Terre Haute & Indianapolis Railroad Company is only assessed and valued for taxation at $21,800 per mile, as against an assessment and valuation of plaintiff's railway of $28,500 per mile. The net earnings of the Terre Haute & Indianapolis railroad per mile were $3,149.02, as against the net earnings per mile of plaintiff's railway of $3,533.29; yet the main track of the Terre Haute & Indianapolis is assessed and valued at only about three-fourths of as much as the assessment and valuation per mile of plaintiff's railway.

These comparisons and many other like comparisons that might readily be made prove that the assessment and valuation of plaintiff's railway in Indiana is so arbitrary, unjust, unequal, and discriminating in its character as to amount to and be a fraud upon the rights and property of plaintiff in said State of Indiana, and that the said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff was made without any reference whatever to the "true cash value" thereof.

Plaintiff further avers that the lines of railway of plaintiff corporation extend into or through the States of Pennsylvania, Ohio, Indiana, and Illinois, and that a very large proportion of all of the traffic and transportation of plaintiff corporation, to wit, about seventy-five per cent. thereof, consists of interstate traffic, transporta-

tion, and commerce, and that only a small proportion of plaintiff's traffic, transportation, and commerce, to wit, only about twenty-five per cent. thereof, is traffic, transportation, and commerce originating and terminating within said State of Indiana; that said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation, as made by said State board of tax commissioners, was made by estimating said property as having a taxable value in proportion to the entire earning capacity of plaintiff
25 corporation as the owner and operator of an interstate railway, engaged in interstate traffic and transportation, and as measured by its earning capacity and power as a carrier, both of commerce beginning and ending wholly within the State of Indiana and all interstate commerce; that the true cash value of said "railroad track" and "rolling stock" of plaintiff corporation, if reckoned and computed on any basis which did not include the earning power from interstate commerce, would be very greatly less than the assessment and valuation placed upon the said "railroad track" and "rolling stock" by said State board of tax commissioners, and far less than the assessment and valuation upon which the plaintiff has paid and tendered the amount of taxes hereinafter mentioned and set forth; that the action of said State board of tax commissioners in making said assessment and valuation of said "railroad track" and rolling stock" upon the basis of its earning capacity as a carrier of interstate commerce was not and could not be authorized by any valid and constitutional law of the State of Indiana, and was *ultra vires* of the State of Indiana, and was beyond the jurisdiction of said State board of tax commissioners and wholly void because said assessment and valuation is not based upon and does not represent the true cash value of said property, but was and is an attempt to tax interstate commerce transported by plaintiff over its said railway tracks in Indiana by assigning fictitious and arbitrary values to said property in the State of Indiana far above and in excess of the true cash value thereof; that even if it were lawful and constitutional to single out and separate from all other taxable property said two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" for the purpose of taxation, and to assess and value for taxation said two classes of property as separate and distinct from all other property subject
26 to taxation, and to assess and value said two classes of property by a distinct method and upon an entirely different basis of assessment and valuation from all other taxable property, all of which plaintiff denies, a full comparison and analysis of the assessments and valuations of said two classes of the property of railroad corporations, made by said State board of tax commissioners at its session in 1891, proves and demonstrates that said assessments and valuations are so grossly unequal, unjust, and arbitrary, as compared with each other, as to amount to and constitute a legal fraud upon the rights of plaintiff.

Wherefore plaintiff avers that said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff within the State of Indiana, as made by said board of tax commissioners at its

session in 1891, constitutes and is a fraud upon the rights and property of plaintiff; that the gross inequalities and discrimination existing in said assessment and valuation of plaintiff's "railroad track" and "rolling stock" in Indiana could not have existed if such assessment and valuation had been made to represent the true cash value of said property as required by said section 137 of said act of March 6, 1891.

That neither the plaintiff nor any officer, agent, attorney, or representative of plaintiff had any notice whatever of said assessment and valuation and of the gross inequalities, errors, and discriminations therein after said assessment and valuation was made by said State board of tax commissioners and before the final adjournment of said board, and had no opportunity whatever to be heard by said board regarding the manifest inequalities, discriminations, and errors in the said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation.

That the only opportunity plaintiff had to confer with such State board of tax commissioners regarding the assessment and
27 valuation of its property was the voluntary appearance of plaintiff, by its representive, before said State board of tax commissioners long before said State board of tax commissioners made or determined upon the assessment and valuation of said "railroad track" and "rolling stock;" that at said conference no notice, knowledge, or intimation was given to plaintiff's representative by said board of the assessment and valuation of said "railroad track" and "rolling stock" which said board proposed and intended to make; that in the absence of any notice or knowledge of the intended assessment and valuation of said property plaintiff was deprived of the right and privilege of contesting said assessment and valuation and of protesting against the gross inequalities, errors, and discriminations therein contained, and all that plaintiff, by its representative, was permitted to do was simply to discuss before said board the proper methods by which to ascertain and determine the taxable value of the "railroad track" and "rolling stock" of railroad corporations; and plaintiff avers that it was denied any notice of the proposed assessment and valuation of its said property and of the amount thereof, and was denied any opportunity to be heard before said State board of tax commissioners regarding said assessment and valuation of its said "railroad track" and "rolling stock."

Plaintiff further avers that in addition to the taxes extended upon the tax duplicate of Henry county, Indiana, upon the basis of assessment and valuation of plaintiff's "railroad track" and "rolling stock" as made by said State board of tax commissioners, a special tax has been assessed and extended against the "railroad track" of plaintiff situated in said Henry county, Indiana, upon a special, arbitrary, and additional valuation of $600 per mile; which said special assessment and valuation, plaintiff avers, was and is wholly without right, without authority of law, without due process of law, and was and is wholly void.

28 That before the commencement of this suit plaintiff, by its proper officers, paid or tendered in lawful money of the United

ties, made legal tender by the laws of the United States, to the several county, city, and town treasurers made defendants herein the full amount of taxes justly and equitably due and to become due upon the "railroad track" and "rolling stock" of plaintiff in the several counties, cities, and towns through or into which the lines of plaintiff's railway extend for the entire year of 1891, as follows, to wit: That plaintiff paid Victor M. Backus, as treasurer of Marion county, the sum of $4,025.19; to J. B. Brewer, as treasurer of Southport, Marion county, Indiana, $28.80; to Thomas McCay, as county treasurer of Lake county, $4,114.79; to Allen W. Reynolds, as treasurer of Porter county, $3,230.14; to Andrew O. Castleman, as treasurer of Starke county, $1,922.70; to Joseph D. Vurpillar, as treasurer of Pulaski county, $4,098.34; to Charles L. Woll, as treasurer of Cass county, $6,815.34; to George W. Hoffman, as treasurer of the city of Logansport, Cass county, $479.58; to H. F. Small, as treasurer of Walton, Cass county, $43.48; to Hiram A. B. Moorhous, as treasurer of White county, $4,056.75; to Daniel Boshour, as marshall of Monticello, White county, $82.43; to E. B. Dibbell, as treasurer of Walcott, White county, $13.19; to Marcus H. Hemphill, as treasurer of Jasper county, $1,870.20; to Samuel A. Martindale, as treasurer of Newton county, $2,384.33; to Amos A. Covalt, as treasurer of Howard county, $2,246.34; to W. A. Markland, as treasurer of Kokomo, Howard county, $350.35; to James K. Armstrong, as treasurer of Tipton county, $1,523.41; to A. F. Swoveland, as treasurer of Windfall, Tipton county, $57.70; to William C. Barnard, as treasurer of Hancock county, $3,107.18; to William B. Veasey, as treasurer of Jeffersonville, Clark county, $515.50; to William P. Cook, as treasurer of Wayne county, $9,489.59; to Martin L.
29 Stratton, as treasurer of Richmond, Wayne county, $675.91; to John Hayes, as treasurer of Jay county, $2,198.69; to I. W. St. John, as treasurer of Dunkirk, Jay county, $266.27; to Albert W. Saint, as treasurer of Henry county, $7,714.38; to John R. Page, as treasurer of Madison county, $3,842.28; to Azro H. Wilkinson, as treasurer of Miami county, $2,900.14; to C. E. Hiatt, as treasurer of Xenia, Miami county, $100.23; which said sums of money were accepted by said defendants as such treasurers aforesaid on account of taxes upon the "railroad track" and "rolling stock" of plaintiff for the year 1891.

That plaintiff tendered in lawful money of the United States, made legal tender by the laws of the United States, to the following-named defendants, as treasurers of the several counties, cities, and towns hereinafter mentioned, the following sums and amounts as and for the taxes justly and equitably due and to become due upon the "railroad track" and "rolling stock" of plaintiff in the several counties, cities, and towns hereinafter mentioned for the year 1891, as follows, to wit: That plaintiff tendered to Simeon S. Bosserman, as treasurer of La Porte county, the sum of $691.14; to E. B. Thomas, as treasurer of Royal Centre, Cass county, $47.53; to George Burkit, as treasurer of Burnettsville, White county, $44.76; to J. R. Casti, as marshal of Reynolds, White county, $21.82; to G. B. Clark, as treasurer of Remington, Jasper county, $41.90; to Thomas E. Valentine, as

treasurer of Johnson county, $3,967.83; to Frank McCollough, as treasurer of Franklin, Johnson county, $173.41; to William Dark, as marshal of Edinburgh, Johnson county, $77.25; to William J. May, as treasurer of Bartholomew county, $6,302.55; to Richard Carter, as treasurer of Columbus, Bartholomew county, $228.76; to William Wiseman, as treasurer of Jonesville, Bartholomew county, $18.05; to Frank Brodhicker, as treasurer of Jackson county, $3,697.71; to E. Hahlbrand, as treasurer of Seymour,
30 Jackson county, $144.03; to Hugh Colvin, as treasurer of Scott county, $2,057.93; to John A. Jenkins, as treasurer of Clark county, $4,451.05; to Levi H. Scott, as treasurer of Floyd county, $394.04; to Jacob Best, as treasurer of New Albany, Floyd county, $309.28; to Daniel H. Demaree, as county treasurer of Jefferson county, $1,272.04; to L. M. Robinson, as treasurer of Madison, Jefferson county, $126.78; to Charles B. Curtis, as treasurer of Jennings county, $2,041.63; to A. E. Rust, as marshal of Vernon, Jennings county, $20.71; to D. Reeder, as treasurer of North Vernon, $66.48; to Jacob H. Thomas, as treasurer of Shelby county, $1,420.78; to Robert Montgomery, as treasurer of Shelbyville, Shelby county, $23.66; to Thomas A. Jones, as treasurer of Rush county, $1,826.41; to Paul Kerr, as treasurer of Rushville, Rush county, $57.27; to William N. Young, as treasurer of Fayette county, $690.69; to M. C. Jay, as tax collector for Cambridge City, Wayne county, $197.36; to George W. Veal, as treasurer of Randolph county, $2,997.41; to William N. McCullough, as marshal of Ridgeville, Randolph county, $65.12; to John G. Grahs, as treasurer of Union City, Randolph county, $112.96; to William A. Fulton, as treasurer of Anderson, Madison county, $171.00; to Joseph H. Parker, as treasurer of Grant county, $4,296.29; to M. McCrae, as treasurer of Marion, Grant county, $250.78; to John P. McGeath, as treasurer of Blackford county, $2,476.74; to A. L. Bateman, as treasurer of Elizabethtown, Bartholomew county, $11.77; which said several sums of money were tendered to said several defendants and were by them and each of them refused and not accepted.

That before the commencement of this suit plaintiff also paid or tendered, in lawful money of the United States, made legal tender by the laws of the United States, to the several county, city, and town treasurers or tax collectors made defendants herein, the
31 following amount of taxes assessed against the personal property, improvements, lots, and lands of plaintiff within the State of Indiana and situated in the several counties, cities, and towns hereinafter mentioned, other than the "railroad track" and "rolling stock" of plaintiff, for the entire year of 1891, as follows, namely: Plaintiff paid to Victor M. Backus, as treasurer of Marion county, $3,812.07; to Thomas McCay, as treasurer of Lake county, $77.89; to Simeon S. Bosserman, as treasurer of La Porte county, $131.65; to Allen W. Reynolds, as treasurer of Porter county, $50.20; to Andrew O. Castleman, as treasurer of Starke county, $73.24; to Joseph D. Vurpillar, as treasurer of Pulaski county, $128.76; to E. B. Thomas, as treasurer of Royal Centre, Cass county, $5.30; to Charles L. Woll, as treasurer of Cass county, $1,380.45; to George

W. Hoffman, as treasurer of Logansport, Cass county, $1,475.93; to H. F. Small, as treasurer of Walton, Cass county, $6.25; to Daniel Boshour, as marshal of Monticello, White county, $14.35; to E. B. Dibbell, as treasurer of Wolcott, White county, $2.43; to Hiram A. B. Moorhous, as treasurer of White county, $57.43; to Marcus H. Hemphill, as treasurer of Jasper county, $14.68; to Samuel A. Martindale, as treasurer of Newton county, $71.80; to Amos A. Covalt, as treasurer of Howard county, $37.53; to W. A. Markland, as treasurer of Kokomo, Howard county, $51.60; to James K. Armstrong, as treasurer of Tipton county, $99.44; to A. F. Swoveland, as treasurer of Windfall, Tipton county, $1.56; to William C. Barnard, as treasurer of Hancock county, $58.85; to Thomas E. Valentine, as treasurer of Johnson county, $101.75; to William Dark, as marshal of Edinburgh, Johnson county, $14.85; to William Wiseman, as treasurer of Jonesville, Bartholomew county, $1.06; to Hugh Colvin, as treasurer of Scott county, $27.92; to John A. Jenkins, as treasurer of Clark county, $203.90; to W. B. Veasey, as treas-
32 urer of Jeffersonville, Clark county, $148.77; to Levi H. Scott, as treasurer of Floyd county, $198.53; to Jacob Best, as treasurer of New Albany, Floyd county, $262.43; to Charles B. Curtis, as treasurer of Jennings county, $27.26; to A. E. Rust, as marshal of Vernon, Jennings county, $0.99; to William P. Cook, as treasurer of Wayne county, $947.01; to Martin L. Stratton, as treasurer of Richmond, Wayne county, $609 35; to M. C. Jay, as tax collector of Cambridge City, Wayne county, $29.10; to John Hayes, as treasurer of Jay county, $38.89; to I. W. St. John, as treasurer of Dunkirk, Jay county, $21.12; to William N. McCullough, as marshal of Ridgeville, Randolph county, $7.05; to Albert W. Saint, as treasurer of Henry county, $132.27; to John R. Page, as treasurer of Madison county, $87.34; to Azro H. Wilkinson, as treasurer of Miami county, $130.47; to C. E. Hiatt, as treasurer of Xenia, Miami county, $5.39; which said several sums of money were accepted and received by said several defendants as such county, city, and town treasurers and tax collectors.

That at the same time plaintiff tendered in lawful money of the United States, made a legal tender by the laws of the United States, the following amount of taxes assessed against the personal property, improvements, lots, and lands of plaintiff other than "railroad track" and "rolling stock" of plaintiff in the several counties, cities, and towns hereinafter mentioned for the entire year of 1891, which said sums so tendered to said several defendants are as follows, to wit: Plaintiff tendered to George Burkit, as treasurer of Burnettsville, White county, the sum of $0.21; to J. R. Casti, as marshal of Reynolds, White county, $1.28; to G. B. Clark, as treasurer of Remington, Jasper county, $3.20; to Frank McCollough, as treasurer of Franklin, Johnson county, $20.02; to William J. May, as treasurer of Bartholomew county, $443.67; to Richard Carter, as treasurer
33 of Columbus, Bartholomew county, $157.20; to E. Hahlbrand, as treasurer of Seymour, Jackson county, $9.76; to Frank Brodhicker, as treasurer of Jackson county, $59.20; to Daniel H. Demaree, as treasurer of Jefferson county, $190.53; to L. M. Robin-

son, as treasurer of Madison, Jefferson county, $117.84; to D. B. Reeder, as treasurer of North Vernon, Jennings county, $0.77; to Jacob H. Thomas, as treasurer of Shelby county, $27.95; to Robert Montgomery, as treasurer of Shelbyville, Shelby county, $8.30; to Thomas A. Jones, as treasurer of Rush county, $12.99; to Paul Kerr, as treasurer of Rushville, Rush county, $6.72; to William N. Young, as treasurer of Fayette county, $62.23; to John G. Grahs, as treasurer of Union City, Randolph county, $11.44; to William A. Fulton, as treasurer of Anderson, Madison county, $19.40; to Joseph H. Parker, as treasurer of Grant county, $323.99; to M. McCrae, as treasurer of Marion, Grant county, $12.87; to Joseph B. McGeath, as treasurer of Blackford county, $67.76; which said several sums so tendered to said several defendants were by them and each of them as such treasurers and tax collectors refused, declined, and not accepted.

Plaintiff further avers that the said action of the said State board of tax commissioners in making the said assessment and valuation for taxation of the said two classes of plaintiff's property denominated "railroad track" and "rolling stock," and in assessing said taxes against said two classes of the property of the plaintiff as hereinbefore set forth, was and is without right, without authority of law, without due process of law, unconstitutional, and void for the following reasons:

First. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the assessment, valuation, and taxation of the two classes of property denominated "railroad track" and "rolling stock" and purporting to confer jurisdiction and
34 authority upon said State board of tax commissioners to make original and final assessment and valuation of said two classes of plaintiff's property are unconstitutional and void because they are in conflict with article 1, sections 12 and 23, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that plaintiff, as to the assessment and valuation for taxation of the said two classes of its property, is denied the jurisdiction of the township assessors, county assessors, and county boards of review of the several counties in which its property is situated and through or into which its line of railway extends, and is deprived of the right of appeal from said county boards of review to the said State board of tax commissioners as an appellate tribunal in which plaintiff could compel a hearing in its behalf for the protection of its rights and property, which jurisdiction and right of appeal are valued and valuable privileges and immunities granted by said statute to all other tax-payers, property-holders, and citizens of said State, excepting only railroad corporations.

Second. Because said act of March 6, 1891, in so far as it relates to the assessment, valuation, and taxation of the two classes of property denominated "railroad track" and "rolling stock" of railroad corporations, and in so far as it purports to confer jurisdiction and authority upon said State board of tax commissioners to make original and final valuation and assessment for

taxation of said two classes of the corporate property of plaintiff, is unconstitutional and void because it is in conflict with article 1, section 12, of the constitution of the State of Indiana and with the fifth amendment and section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that no provision whatever is made by said statute requiring any notice whatever to be given to the plaintiff by said State board of tax commissioners of any action taken by or in contemplation to be taken by said State board of tax commissioners touching the valuation, assessment, and taxation of the said two classes of the property of plaintiff, to the end that the plaintiff might be present or be represented in defense of its rights and property against the said valuation, assessment, and taxation made by said State board of tax commissioners, and because said statute does not provide for or reserve to plaintiff any right to any hearing before said State board of tax commissioners and utterly fails to require said State board of tax commissioners to hear plaintiff regarding the valuation, assessment, and taxation of the said two classes of the property of plaintiff, either with or without notice.

Third. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the listing, valuation, assessment, and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and valuation for taxation of said two classes of the corporate property of plaintiff are unconstitutional and void because they are in conflict with article X, section 1, of the constitution of the State of Indiana, in this, to wit, that the said two classes of the corporate property of plaintiff are not, and under the provisions and requirements of said statute cannot be, listed, valued, assessed, and taxed at a uniform and equal rate of valuation, assessment, and taxation with other real estate and personal property in said State of Indiana, but, on the contrary, are listed, valued, assessed, and taxed—and by the provisions and requirements of said statute are required to be listed, valued, assessed, and taxed—by a distinct, separate, different, and discriminating method from and at an ununiform and unequal rate of valuation, assessment, and taxation with other real estate and personal property in said State of Indiana.

Fourth. Because the sections, clauses, and provisions of said act of March 6, 1891, relating to the listing, valuation, assessment, and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make said original and final assessment and valuation for taxation of said two classes of the corporate property of plaintiff are unconstitutional and void because they are in conflict with article IV, section 22, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit,

that said sections, clauses, and provisions of said statute constitute a special law for the listing, valuation, assessment, and taxation of said two classes of the corporate property of railroad corporations, other and different from the general law providing for the listing, valuation, assessment, and taxation of other real estate and personal property in said State of Indiana, unjustly discriminating against plaintiff and other railroad corporations and increasing the burden of taxation upon said two classes of the property of plaintiff far beyond the burden imposed upon other real estate and personal property in said State of Indiana of equal cash value with said two classes of the corporate property of plaintiff.

Fifth. Because the sections, clauses, and provisions of said act of March 6, 1891, relative to the listing, valuation, assessment, and taxation of the two classes of the property of railroad corporations denominated "railroad track" and "rolling stock" under which said State board of tax commissioners claimed and asserted jurisdiction and authority to make the said original and final assessment and valuation for taxation of said two classes of the corporate property of plaintiff are unconstitutional and void because they are in conflict with article 1, sections 12 and 23, and article X,
37 section 1, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States, in this, to wit, that said sections, clauses, and provisions of said statute provide, require, and result in an unjust, unequal, and discriminating valuation, assessment, and taxation of said two classes of property belonging to railroad corporations as compared with other real estate and personal property in said State of Indiana, whereby the privileges and immunities of plaintiff corporation and other railroad corporations, as citizens of the United States, engaged in interstate commerce, are abridged, their property is taken without due process of law, and they are denied the equal protection of the laws in the manner following, namely: That said State board of tax commissioners, in making the said assessment and valuation for taxation of said two classes of the corporate property of plaintiff, did not limit its consideration to the fair cash value of said two classes of the property of plaintiff within said State of Indiana, and did not make said assessment and valuation as measured by the fair cash value of the said two classes of the property of plaintiff within the limits of the State of Indiana, but, on the contrary, imported and assigned to said two classes of the property of plaintiff actually within said State of Indiana and properly subject to taxation therein a very large increase of value dependent wholly upon and belonging to the corporate property of plaintiff situated in other States and duly taxed in said other States; that said fictitious values so imported and assigned to said two classes of the property of plaintiff actually within said State of Indiana by reason of the fact that plaintiff owns valuable railways, equipment, and terminal facilities in other States which are used and operated in connection with the railway and equipment of plaintiff within said State of Indiana has resulted in the double taxation, to a large de-

gree, of said two classes of the corporate property of plaintiff
38 within said State of Indiana and has become and is a serious burden upon the interstate commerce carried on by plaintiff, and was and is an unjust, unequal, and illegal method of assessment and valuation of the said two classes of property of plaintiff within said State of Indiana; that the railway, equipment, terminal facilities, and property of plaintiff situated in Illinois, Ohio, and Pennsylvania are fully taxed in said States, and therefore all increase of valuation imported and assigned to the said two classes of the property of plaintiff within the State of Indiana by reason of its physical connection with the railways and property of plaintiff situated in said other States results in double taxation to the extent of such increase of valuation and is therefore unjust, unequal, and illegal.

Sixth. Because the sections, clauses, and provisions of the said act of March 6, 1891, providing for the creation of the said State board of tax commissioners and defining the powers, rights, and duties of said board, in so far as they relate to the valuation and assessment of property for taxation, are unconstitutional and void because judicial powers, duties, and functions are granted to and enjoined upon said board, three members of which are the three chief executive officers of the State; said sections, clauses, and provisions of said act are therefore in conflict with article 3, section 1, of the constitution of Indiana.

Seventh. Because the sections, clauses, and provisions of the said act of March 6, 1891, creating said State board of tax commissioners, providing how and of whom said board shall be constituted, and defining the powers, functions, and duties of said board, are unconstitutional and void, 1st, because it is attempted to create two additional State executive and administrative offices and fill the two offices so created continuously and indefinitely with persons appointed by the governor, thus attempting to make the incum-
39 bents of said two offices continuously appointive and not elective, whereas all executive and administrative State officers must be elected by the people; and, 2d, because not only executive and administrative powers, functions, and duties are given to and enjoined upon said two appointive State officers, but judicial powers, functions, and duties are also given to and enjoined upon them, whereas all judicial offices must be filled by election by the people.

Eighth. Because said act of March 6, 1891, in so far as it permits or purports to permit or require the taxation of the "railroad track" and "rolling stock" of railroad corporations engaged in the transportation of both State and interstate commerce upon an assessment and valuation determined by and based upon the amount of their gross and net earnings derived from all their traffic and transportation, both that originating and ending wholly in Indiana and their interstate traffic and transportation, is unconstitutional and void because in violation of and in direct conflict with section 8, article 1, of the Constitution of the United States, because to impose a tax upon property according to its valuation as determined by and based upon interstate commerce transported by that prop-

erty is, in effect, to tax interstate business and is a tax upon interstate commerce.

Ninth. Because said act of March 6, 1891, in so far as it purports to grant power and authority to said State board of tax commissioners to assess taxes against railroad corporations upon personal property and equipment leased or hired by them, and to hold such railroad corporations liable for taxes upon such leased or hired personal property and equipment, whether in possession and use on April first or not and whether duly taxed in other States or not, and in so far as it purports to confer upon said State board of tax commissioners power and authority to assess and value for taxation property and values not within the State of Indiana and "rolling stock" and equipment never used or operated within the State of Indiana, is unconstitutional and void because it is in violation of and in conflict with section 23, article 1, and sections 22 and 23, article 4, of the constitution of the State of Indiana and with section 1 of the fourteenth amendment to the Constitution of the United States.

40 Plaintiff further alleges that in each of said counties, cities, and towns of which the defendants are respectively county, city, and town treasurers and tax collectors taxes amounting to a much larger sum than the amounts so tendered or paid have been pretended to be assessed against the plaintiff upon the valuations so wrongfully, unjustly, and unlawfully placed upon said property of plaintiff, and that said pretended taxes have been extended upon the respective tax duplicates in the said respective counties, cities, and towns, and that such tax duplicates are now in the hands of each of the defendants as such treasurers and tax collectors aforesaid, and that each of the defendants, as such treasurers and tax collectors aforesaid, are claiming and asserting that said several sums so extended on said tax duplicates are delinquent taxes against plaintiff and its property under the provisions of said act of March 6, 1891, and that each of said several defendants, in their official capacities, are threatening, intend to, and will, in supposed compliance with the requirements of the provisions of said act of March 6, 1891, on that subject, levy on the said property of the plaintiff and will proceed to sell and distrain the same to pay and satisfy said sums so claimed to be due and delinquent if not enjoined from so doing, and that each of the defendants as such treasurer or tax collector is threatening to collect such wrongful, unjust, illegal, and void taxes by levy on the property of the plaintiff, to the great and irreparable injury of the plaintiff.

41 Plaintiff further avers that notwithstanding said payments and tenders of payments of the taxes justly and equitably due from plaintiff upon its said "railroad track" and "rolling stock" for the year 1891, as hereinabove set forth, the said defendants and each of them, as treasurers and tax collectors of the several counties, cities, and incorporated towns through or into which the lines of plaintiff's railway extend, are claiming and asserting the right to enforce the payment of the entire taxes as extended upon their tax duplicates upon said wrongful, unjust, unlawful, and void assessment and

valuation of the "railroad track" and "rolling stock" of plaintiff made by said State board of tax commissioners and will, unless restrained and enjoined by decree of court, attempt to enforce the payment of said wrongful, unjust, unlawful, and void taxes by distraint and sale of the property of plaintiff.

That the said wrongful, unjust, inequitable, and unlawful taxes extended and entered upon said unjust, unlawful, and void assessment and valuation made by said State board of tax commissioners constitutes and *is* a cloud upon the title of plaintiff to its said "railroad track" and "rolling stock," which a court of equity has full power and jurisdiction to remove by its decree.

That plaintiff has united in this suit as defendants herein the several treasurers and duly authorized tax collectors of the several counties, cities, and incorporated towns through or into which the lines of plaintiff's railway within the State of Indiana extend, to the end that a multiplicity of suits may be avoided and to
42 the end that a complete determination and settlement of the rights and questions involved may be had and made in one litigation.

That the said assessment and valuation of the "railroad track" and "rolling stock" made by said State board of tax commissioners is a single unit assessment and valuation of the entire "railroad track" and "rolling stock" of plaintiff within the State of Indiana, regardless of the limits of the counties, cities, and incorporated towns through or into which said lines of plaintiff's railway extend, and that therefore a single suit to enjoin the collection of all taxes wrongfully, unjustly, and unlawfully extended upon the various tax duplicates upon and by reason of said wrongful, inequitable, and unlawful assessment and valuation is within the jurisdiction of and properly cognizable by a court of equity.

That plaintiff here now brings into court, in lawful money of the United States, the several sums and amounts of money tendered to and refused by said several defendants and each of them hereinbefore specifically mentioned, designated, and averred as having refused to accept the said several sums and amounts of money tendered by plaintiff to them, as hereinbefore set forth and averred, and keeps its said tender so made by plaintiff to said several defendants and each of them good.

By reason of the facts and averments hereinbefore set forth and averred, plaintiff prays that upon the final hearing hereof it be finally adjudged and decreed that said assessment and valuation of the "railroad track" and "rolling stock" of plaintiff corporation within the State of Indiana, made by said State board of tax commissioners at its session in the year 1891, is exorbitant, inequitable, unlawful, fraudulent, and wholly void; that the cloud placed upon plaintiff's title to its said "railroad track" and "rolling stock" by reason of said wrongful, unlawful, inequitable assessment and
43 valuation made by said State board of tax commissioners be removed; that the defendants, as such treasurers and duly authorized tax collectors of said counties, cities, and incorporated towns as aforesaid, and each and every of them, and all persons,

officers, deputies, and agents acting by, through, or under the authority of any or either of said defendants, be perpetually enjoined and restrained from collecting or in any manner attempting to collect any other or further part of the said taxes extended and entered upon the several tax duplicates now in the official custody of said several defendants, other than or in addition to the said sums and amounts of money paid and tendered by plaintiff to said several defendants as and for the taxes justly, equitably, and lawfully due from plaintiff upon its corporate property within said State of Indiana for the year 1891, as hereinbefore mentioned, set forth, and averred; and plaintiff further prays the court to grant a temporary injunction herein pending this cause, and plaintiff prays for any and all other proper relief.

BUTLER, SNOW & BUTLER,
Attorneys for Plaintiff.

S. O. PICKENS,
S. STANSIFER,
J. L. RUPE,
Of Counsel.

44 In the Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
No. 43365.

Samuel O. Pickens, being duly sworn, on his oath says that he is one of plaintiff's counsel in the above-entitled cause and, as such, authorized to make this affidavit; and affiant says he has read the complaint in said cause, hereto attached, and that as to all facts therein alleged of which he has personal knowledge he says they are true in substance as therein stated, and that he is informed and believes that all other facts in said complaint alleged are true, and upon such information and belief he says they are true in substance as therein stated.

And affiant further says that the said defendants, as treasurers and tax collectors in said several counties, cities, and towns through or into which plaintiff's line of railway extends, claim and assert that large sums of money—the exact amounts of which affiant is unable to state, but said sums are largely in excess of the several amounts tendered by plaintiff to said several defendants as and for taxes against plaintiff's said property, as in the complaint alleged—are due said several counties, cities, and towns and the State of Indiana as taxes on said property, and claim and assert that said several sums so claimed to be due are delinquent taxes against plaintiff and its property under the provisions of said act of
45 March 6, 1891, and said several defendants, in *in* their official capacities, in supposed compliance with the requirements of the provisions of said act of March 6, 1891, on that subject, as affiant believes, intend to and will levy on the said property of plain-

tiff and will proceed to distrain and sell the same to pay and satisfy said sums so claimed to be due and delinquent, if not enjoined from so doing.

And affiant further says that as evidence of the purpose and intention of said defendant county treasurers to distrain and sell plaintiff's property to pay and satisfy said sums so claimed to be due and delinquent the Hon. A. G. Smith, attorney general of the State of Indiana, who is conducting the defense in said cause, announced to the court, while this cause was being considered on the 14th day of June, 1892, that he represented all the counties interested in said suit, and when the court announced that the final hearing of the cause would be postponed until October, 1892, the said Smith, threatening, said in substance that by that time the taxes would be collected by the treasurers.

And affiant further says that plaintiff and its counsel have in good faith desired and endeavored to have a hearing of said cause before the adjournment of the courts for the summer vacation and were ready for such hearing on the 14th inst., that being the date the superior court had fixed for the hearing of said cause.

SAMUEL O. PICKENS.

STATE OF INDIANA, } ss:
County of Marion, }

Subscribed and sworn to this 18th day of June, 1892, before me—
JOHN R. WILSON, *Clerk.*

Subscribed and sworn to before me this 25th day of June, 1892.
JOHN R. WILSON, *Clerk.*

46 And afterwards, to wit, on the said 19th day of April, 1892, being the — judicial day of general term of said superior court for the month of April, 1892, before the Honorable Lewis C. Walker, Napoleon B. Taylor, and James W. Harper, judges thereof, the following proceeding was had herein:

Ordered by the court that cause numbered 43365 be assigned to room three (3) for trial.

And afterwards, to wit, on the said 19th day of April, 1892, there were issued from the office of the clerk of said superior court thirty-two writs of summons in this cause, addressed to the sheriffs of that number of counties in the State of Indiana; which said writs were afterwards, to wit, in due time, returned to the said clerk's office with the sheriffs' endorsement- respectively thereon. Said writs of summons are in the words and figures following, viz:

(Original writs omitted, as the parties answered.)

And afterwards, to wit, on the 10th day of May, 1892, being the 8th judicial day of the special term of the said superior court for the month of May, 1892, before the Honorable Lewis C. Walker, judge presiding, in said room three (3), the following proceedings were had herein, viz:

"Come now William J. May, treasurer of Bartholemew county, Indiana; Marcus H. Hemphill, treasurer of Jasper county, Indiana; William C. Barnard, treasurer of Hancock county, Indiana; John Hays, treasurer of Jay county, Indiana; Jacob H. Thomas, treasurer of Shelby county, Indiana; Joseph H. Parker, treasurer of Grant county, Indiana; William N. Young, treasurer of Fayette
47 county, Indiana; Azro H. Wilkinson, treasurer of Miami county, Indiana; Hiram A. B. Moorhous, treasurer of White county, Indiana; Frank Brodhecker, treasurer of Jackson county, Indiana; Albert W. Saint, treasurer of Henry county, Indiana; T. E. Valentine, treasurer of Johnson county, Indiana; John P. McGeath, treasurer of Blackford county, Indiana; John R. Page, treasurer of Madison county, Indiana; Hugh Colvin, treasurer of Scott county, Indiana; George W. Veal, treasurer of Randolph county, Indiana; Samuel A. Martindale, treasurer of Newton county, Indiana; Amos A. Covatt, treasurer of Howard county, Indiana; Daniel H. Demarre, treasurer of Jefferson county, Indiana, and Charles B. Curtis, treasurer of Jennings county, Indiana, defendants in the above-entitled cause, by counsel, and each enter their special appearance herein and each files his separate plea or answer in abatement to the plaintiff's complaint herein, in the words and figures following, viz:

48 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant William J. May, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Bartholomew county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Bartholomew county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Bartholomew.

49 2. The defendant, for second plea in abatement herein, says that he is the treasurer of Bartholomew county, in the State of Indiana; that as such county treasurer he holds the tax duplicate on which is placed and extended the assessment against the said plaintiff made by the State board of equalization and apportioned to said county; that said assessment is apportioned to German, Columbus, Wayne, Flat Rock, and Sand Creek townships, in said county, and the city of Columbus and the town of Elizabethtown and the town of Jonesville in proportion to the length of plaintiff's road extending through them, and said townships have assessed taxes upon said valuation, which are extended on said tax duplicate against plaintiff which is now in defendant's possession.

He further avers that the board of commissioners of Bartholomew county, in the State of Indiana, have levied a tax on said property, which is placed and extended on said tax duplicate; also the State of Indiana has levied a tax by act of the legislature, which is also extended and placed on said tax duplicate for collection, and the city of Columbus has levied a tax on said property going through the same, which is placed and extended on said tax duplicate, all of which make up and constitute the tax described in the complaint as being levied against plaintiff upon said assessment by Bartholomew county. He avers that said town of Jonesville levied a tax on said property. He avers that the said several townships or their trustees and the board of commissioners of Bartholomew county and said city of Columbus and said town of Elizabethtown or
50 the trustees thereof and said town of Jonesville or the trustees thereof and the State of Indiana, who are entitled to said taxes, and the parties in interest, are not made parties to this action and should be made parties thereto.

Wherefore defendant prays an abatement of said action.

(Signed) WILLIAM J. MAY,
HORD & EWING,
Att'ys for Def't.

STATE OF INDIANA, }
County of Bartholomew, } *ss:*

William J. May, being duly sworn, on his oath says that he is the defendant named in the foregoing two pleas in abatement, and that the same are true in substance and in fact.

(Signed) WILLIAM J. MAY.

Subscribed and sworn to before me this 9th day of May, 1892.

(Signed) M. D. EWING,
[SEAL.] *Notary Public.*

51 STATE OF INDIANA, *County of Marion,* } ss:

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.* } Separate Plea in Abatement of the Defendant Marcus H. Hemphill.

The defendant Marcus H. Hemphill, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Jasper county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Jasper county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Jasper.

52 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) MARCUS H. HEMPHILL.

STATE OF INDIANA, *County of Jasper,* } ss:

Marcus H. Hemphill, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) MARCUS H. HEMPHILL.

Subscribed and sworn to before me this 9th day of May, 1892.

[SEAL.] (Signed) WM. H. COOVER,
Clerk Jasper Circuit Court,
By JAMES F. IRWIN, *Deputy.*

53 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant William C. Barnard, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Hancock county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Hancock county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which
54 is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Hancock.

Wherefore he prays that said cause as to him for said reasons abate.

(Signed) WILLIAM C. BARNARD.

STATE OF INDIANA, } ss:
County of Hancock, }

William C. Barnard, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) WILLIAM C. BARNARD.

Subscribed and sworn to before me this 5 day of May, 1892.

[SEAL.] (Signed) CHARLES DOWNING, *Clerk.*

55 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.* } 43363.

The defendant John Hayes, one of the defendants in the above-entitled cause, for the purpose of entering a separate and special plea

in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Jay county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Jay county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county of Jay, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Jay.

56 Wherefore he prays that said cause as to him for said reasons abate.

—— ——.

STATE OF INDIANA, } ss:
Jay County, }

John Hayes, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JOHN HAYES.

Subscribed and sworn to before me this sixth day of May, 1892.

[SEAL.] (Signed) HARRY T. SIPE,
Notary Public, Jay County, Indiana.

(Signed) E. E. McGRIFF,
Att'y for Defendant John Hayes.

57 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS McCAY, *et al.*

The defendant Jacob H. Thomas, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Shelby county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Shelby county; that this defendant is the treasurer of

Shelby county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Shelby.

58 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) JACOB H. THOMAS.

STATE OF INDIANA, *County of* ——, } *ss:*

Jacob H. Thomas, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JACOB H. THOMAS.

Subscribed and sworn to before me this 10th day of May, 1892.

(Signed) JOHN R. WILSON, *Clerk.*

59 STATE OF INDIANA, *Marion County.*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS *et al.*	Separate Plea in Abatement by Joseph H. Parker, Treas. Grant County.

Comes now Joseph H. Parker, treasurer of the county of Grant and State of Indiana, one of the defendants in the above-entitled cause, and for his separate plea in abatement to the jurisdiction of the court over his person in this action says—

That he was at the commencement of this suit and still is a resident of the county of Grant and State of Indiana, and was not at the commencement of this action and is not now a resident of the county of Marion, in the State of Indiana.

That he was at the commencement of this action and still is the treasurer of the county of Grant and State of Indiana, and has in his possession as such treasurer the tax duplicate of said county, and that it is his official duty as such officer to keep such duplicate at his office in said county and to collect all taxes appearing thereon.

That the only tax against the plaintiff which he is seeking or attempting to collect is the tax appearing on said duplicate against it and which is now delinquent.

That he is not seeking, attempting, threatening, or intending to

collect any part of said taxes from any property outside of the said county of Grant.

60 Wherefore he demands that this action as to him abate.

(Signed) BROWNLEE & PAULUS,
Att'ys for Defendant.

STATE OF INDIANA, }
Grant County. }

Joseph H. Parker, being duly sworn, says that he is the defendant in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JOSEPH H. PARKER.

Subscribed and sworn to before me this 5th day of May, 1892.

[SEAL.] (Signed) WILSON ADDNYTON, *Clerk.*

61 STATE OF INDIANA, } *ss:*
Marion County, }

Superior Court of Marion County, May Term, 1892.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS and Others.

William N. Young, treasurer of Fayette county, one of the defendants in the above-entitled cause, for a separate special appearance in said cause upon his oath says that he has never been a resident or inhabitant of Marion county, State of Indiana; that he is now and has been at all times for the fifteen years last past a *bona fide* resident and citizen of Fayette county, State of Indiana.

He therefore prays that said action as to him may be abated.

(Signed) WILLIAM N. YOUNG.

Subscribed and sworn to before me this 6th day of May, 1892.

[SEAL.] (Signed) REUBEN CORWIN,
Notary Public in and for Fayette County, State of Indiana.

62 STATE OF INDIANA, } *ss:*
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Azro H. Wilkinson, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says

that this defendant was at the commencement of this suit and still is a resident of Peru, Miami county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Miami county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Miami.

63 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) AZRO H. WILKINSON.

STATE OF INDIANA, }
County of Miami, } *ss:*

Azro H. Wilkinson, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) AZRO H. WILKINSON.

Subscribed and sworn to before me this 4th day of May, 1892.

[SEAL.] (Signed) R. P. EFFINGER,
Notary Public.

64 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant Hiram A. B. Moorhous, one of the defendants in the above-entitled cause, for the purpose of entering a separate plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of White county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of White county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against

said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of White nor is he intending nor threatening to do any act looking towards the collection of said tax outside of said county of White.

65 Wherefore he prays that said cause as to him for said reasons abate.

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STATE OF INDIANA, } ss:
County of White, }

Hiram A. B. Moorhous, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) HIRAM A. B. MOORHOUS.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.] (Signed) J. PRESSLEY,
Clerk White Cir. Court, Ind.

66 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS McCAY, *et al.*

The defendant Frank Brodhicker, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Jackson county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Jackson county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Jackson.

67 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) FRANK BRODHICKER,
Treasurer Jackson County, Ind.

STATE OF INDIANA, } ss:
County of Jackson, }

Frank Brodhicker, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) FRANK BRODHICKER,
Treasurer Jackson County, Ind.

Subscribed and sworn to before me this 5th day of May, 1892.

[SEAL.] (Signed) BYFORD E. LONG,
Clerk Jackson Circuit Court.

68 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Albert W. Saint, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Henry county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Henry county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Henry.

69 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) ALBERT W. SAINT,
By A. G. SMITH &
J. M. MELLETT,
Att'ys for Defendant.

STATE OF INDIANA, } ss:
County of Henry, }

Albert W. Saint, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) ALBERT W. SAINT.

Subscribed and affirmed to before me this 7th day of May, 1892.

(Signed) BENJ. S. PARKER,
Clerk Henry Circuit Court.

70 STATE OF INDIANA, } *ss:*
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant T. E. Valentine, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Johnson county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Johnson county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Johnson.

71 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) T. E. VALENTINE.

STATE OF INDIANA, } *ss:*
County of Johnson, }

T. E. Valentine, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) T. E. VALENTINE.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.] (Signed) CHARLES BYFIELD,
Clerk Johnson Circuit Court.

72 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant John P. McGeath, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Blackford county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county; that this defendant is the treasurer of Blackford county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Blackford.

73 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) JOHN P. McGEATH.

STATE OF INDIANA, } ss:
County of ——, }

John P. McGeath, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JOHN P. McGEATH.

Subscribed and sworn to before me this 9 day of May, 1892.

(Signed) A. M. SWEENEY, *Clerk.*

74 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant John R. Page, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in

abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Madison county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Madison county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Madison.

75 Wherefore he prays that said cause as to him for said reasons abate.

STATE OF INDIANA, } *ss:*
County of Madison, }

John R. Page, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) JNO. R. PAGE.

Subscribed and sworn to before me this 6th day of May, 1892.

[SEAL.] (Signed) JAMES J. NETTERVILLE,
Clerk Madison Circuit Court.

76 STATE OF INDIANA, } *ss:*
Marion County, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Hugh Colvin, one of the defendants in the above-entitled cause, for the purpose of entering a separate and special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Scott county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Scott county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all

taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Scott.

77 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) S. B. WELLS,
Att'y for Hugh Colvin.

STATE OF INDIANA, } ss:
County of Scott, }

Hugh Colvin, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) HUGH COLVIN.

Subscribed and sworn to before me this 3rd day of May, 1892.

[SEAL.] (Signed) MARK STOREN,
Clerk Scott Cir. Ct.

78 STATE OF INDIANA, } ss:
Marion County, }

In the Superior Court of Marion County, May Term, 1892.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS *et al.*	43365.	Separate Answer of Veal.

Comes now George W. Veal, treasurer of Randolph county, one of the defendants in the above cause, and, for his separate answer and by way of abatement and plea to the jurisdiction of the court of the person of the defendant, says that at the time of the commencement of this suit, long before, and ever since he was and now is a resident of Randolph county, in the State of Indiana, and the duly elected, qualified, and acting treasurer of said county, and that said cause of action did not arise or accrue in the county of Marion, in said State of Indiana, and the same is not a joint action against him, said defendant, and his codefendants; but if any cause of action exists at all against any one of said defendants, said cause of action is several.

Wherefore the defendant says that if any cause of action exists against him in favor of said plaintiff the jurisdiction is in the Randolph circuit court, in the State of Indiana. Wherefore he demands judgment.

GEORGE W. VEAL.

79 STATE OF INDIANA, } ss:
Randolph County, }

George W. Veal, being duly sworn, upon his oath says the matters and things set out in the foregoing answer and plea are true in substance and in fact.

GEORGE W. VEAL.

Subscribed and sworn to before me this 6th day of May, 1892.
[SEAL.] JNO. R. ENGLE.

80 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Samuel A. Martindale, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Newton county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Newton county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Newton.

81 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) SAMUEL A. MARTINDALE.

STATE OF INDIANA, } ss:
County of Newton, }

Samuel A. Martindale, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) SAMUEL A. MARTINDALE.

Subscribed and sworn to before me this 4th day of May, 1892.
[SEAL.] (Signed) WM. K. KENOYER,
Clerk Cir. Court.

82 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Amos A. Covatt, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Howard county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Howard county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Howard.

83 Wherefore he prays that said cause as to him for said reasons abate.

(Signed) ELLIOTT & OVERTON,
Att'ys for Defendant.

STATE OF INDIANA, }
County of Howard, } *ss:*

Amos A. Covatt, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) AMOS A. COVATT.

Subscribed and sworn to before me this 6th day of May, 1892.
(Signed) J. F. ELLIOTT,
Notary Public.

84 STATE OF INDIANA, *Marion County,* } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

Answer in Abatement.

The said defendant, Daniel H. Demaree, as county treasurer within and for said county of Jefferson, in the State of Indiana, appearing specially herein, for the purpose of objecting to the jurisdiction of this court over his person, files this his plea in abatement, and says that this court ought not to have or take further cognizance of this action as to this defendant, because this defendant prior to the commencement of this action was and now is a *bona fide* resident of Jefferson county, in the State of Indiana, and at no time has this defendant resided in Marion county, in the State of Indiana; that prior to the commencement of this action this defendant was the duly elected, qualified, and acting treasurer of Jefferson county, in the State of Indiana, and ever since that time has been continuously and now is such county treasurer; that as such treasurer he has received from the auditor of said Jefferson county the tax duplicate of said county for the year 1891, and now has said duplicate in his possession for the purpose of collecting the taxes extended
85 thereon, and it is his duty as such treasurer to collect all the taxes appearing upon said duplicate; that the only taxes against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff, assessed against that portion of the real estate and personal property owned, controlled, and in the possession of said plaintiff on the first day of April, 1891, and situated in said Jefferson county, in the State of Indiana, which tax is now delinquent; that this defendant is not seeking nor threatening or intending to levy any portion of said tax from any property outside of said Jefferson county, Indiana.

Wherefore he prays that this action as to him abate.

(Signed) DANIEL H. DEMAREE.

(Signed) A. D. VANOSDOL,
Att'y for Defendant.

STATE OF INDIANA, *Jefferson County,* } *ss:*

Daniel H. Demaree, treasurer of Jefferson county, Indiana, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) DANIEL H. DEMAREE.

Subscribed and sworn to before me, the undersigned, clerk of the Jefferson circuit court, this 7th day of May, 1892.

Witness my hand and the seal of said court.

[SEAL.] (Signed) W. H. MATTHEWS, *C. J. C. C.*

86 And now come also Elihu B. Dibbell, treasurer of the town of Wolcott, Indiana; Daniel Bishoar, treasurer of the city of Monticello, Indiana; George Burkit, treasurer of the town of Burnettsville, Indiana; Leander M. Robinson, treasurer of the city of Madison, Indiana; William A. Markland, treasurer of city of Kokomo, Indiana; C. E. Hiatt, treasurer of the town of Xenia, Indiana; Frank McCullough, treasurer of the city of Franklin, Indiana; George W. Hoffman, treasurer of the city of Logansport, Indiana; William A. Fulton, treasurer of the city of Anderson, Indiana; Aaron L. Bateman, treasurer of the town of Elizabeth, Indiana; Ephraim A. Ahlbrand, treasurer of the city of Seymour, Indiana; William Wiseman, treasurer of the town of Jonesville, Indiana; Martin L. Strattan, treasurer of the city of Richmond, Indiana; Morton McRea, treasurer of the city of Marion, Indiana; Robert Montgomery, treasurer of the city of Shelbyville, Indiana; John G. Grahs, treasurer of Union City, Indiana; Isaac W. St. John, treasurer of the town of Dunkirk, Indiana; David B. Reeder, treasurer of the city of North Vernon, Indiana, and Richard Carter, treasurer of the city of Columbus, Indiana, defendants in the above-entitled cause, by their counsel, respectively, and now each enters his special appearance herein and files his separate plea or answer in abatement in this cause to the plaintiff's complaint herein, in the words and figures following, viz:

87 STATE OF INDIANA, } *ss:*
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant Charles B. Curtis, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of said defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Jennings county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of Jennings county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing

thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Jennings.

88 Wherefore he prays that said cause as to him for said reasons abate.

STATE OF INDIANA, }
County of Jennings, } *ss:*

Charles B. Curtis, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) CHARLES B. CURTIS.

Subscribed and sworn to before me this 3rd day of May, 1892.

[SEAL.] (Signed) JAS. H. HUCKLEBURY,
Notary Public.

89 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant Elihu B. Dibell, one of the defendants in the above-entitled cause, for the purpose of entering a special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of White county, in said State of Indiana (of the town of Wolcott, in said county), and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana. This affiant is the treasurer of said town of Wolcott, in White county, Indiana, and as such treasurer he has in his possession the tax duplicate of said town, and it is his official duty to receive all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which

90 is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said town of Wolcott, nor is he intending or threatening to do any act looking toward the collection of said taxes outside of said town of Wolcott.

Wherefore he prays that said cause for said reasons as to this defendant abate.

STATE OF INDIANA, } ss:
White County, }

Elihu B. Dibell, being duly sworn, on oath says that he is the defendant named in the foregoing plea in abatement, and that the said plea is true in substance and in fact.

(Signed) ELIHU B. DIBELL.

Subscribed and sworn to before me, a notary public in and for said county and State, this 6th day of May, 1892.

Witness my hand and notarial seal.

(Signed) GEO. F. BAKER,
Notary Public. [SEAL.]

91 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, DAVID BREWER, THOS. MCCAY, *et al.*

The defendant Martin L. Strattan, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Wayne county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the city of Richmond, in said county and State, and that as such treasurer he has in his possession the tax duplicate of said city, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff on plaintiff's property located within the corporate limits of said city and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part
92 of said tax from any of plaintiff's property outside of said city of Richmond.

Wherefore he prays that said cause as to him for said reasons abate.

(Signed) A. C. LINDEMUTH, *City Att'y.*

he had in his possession the tax duplicate of said town, and that it was his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant was or is threatening or seeking to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he was not and is not seeking or threatening or intending to levy or collect any part of said tax from any property outside of said
97 town of Burnettsville, nor was he nor is he intending or threatening to do any act looking towards the collection of said tax outside of the limits of said town of Burnettsville.

Defendant further says that since the commencement of this suit, to wit, on the 2nd day of May, 1892, a regular election for marshal, clerk, treasurer, and trustees for said town of Burnettsville was duly and legally held by the proper officers and in the proper voting precincts in said town, at which election W. W. McMullen was duly and legally by the legal voters of said town chosen and elected treasurer for said town for the term next ensuing said election; that on the 6th day of May, 1892, said McMullen executed and filed with the board of trustees of said town of Burnettsville his bond in the penal sum theretofore fixed by said board of trustees, with sureties thereon; which bond, with the sureties thereon, was by said board of trustees accepted and approved, and said W. W. McMullen, having taken the proper oath for the faithful discharge of his duties as treasurer aforesaid, entered upon the duties of the office of treasurer, and has ever since been and is now the duly and legally elected, qualified, and acting treasurer of and for said town of Burnettsville, and as such treasurer has in his possession the tax duplicate of said town as aforesaid, and said W. W. McMullen is not now and since the commencement of this suit has not been a resident of Marion county, Indiana, but has been and is a resident of White county, Indiana.

98 Wherefore this defendant prays that said cause as to him for the reasons aforesaid abate.

(Signed) HARTMAN & HAMELLE,
Att'ys for Def't.

STATE OF INDIANA, }
County of White, } *ss:*

George Burkit, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) GEORGE BURKIT.

Subscribed and sworn to before me this 9th day of May, 1892.

[SEAL.] (Signed) J. PRESSLEY, *Clerk.*

99 STATE OF INDIANA, *Marion County,* } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.* } Answer in Abatement.

The said defendant, Leander M. Robinson, as city treasurer within and for said city of Madison, in the State of Indiana, appearing specially herein for the purpose of objecting to the jurisdiction of this court over his person, files this his plea in abatement and says that this court ought not to have or take further cognizance of this action as to this defendant because this defendant, prior to the commencement of this action, was and now is a *bona fide* resident of Madison, Jefferson county, in the State of Indiana, and at no time has this defendant resided in Marion county, in the State of Indiana; that prior to the commencement of this action this defendant was the duly elected, qualified, and acting treasurer of Madison, in the State of Indiana, Jefferson county, and ever since that time has been continuously and now is such city treasurer; that as such treasurer he has received from the clerk of said city of Madison the tax duplicate of said city for the year 1891 and now has said duplicate in his possession for the purpose of collecting the taxes extended
100 thereon, and it is his duty as such treasurer to collect all the taxes appearing upon said duplicate; that the only taxes against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff assessed against that portion of the real estate and personal property owned, controlled, and in the possession of said plaintiff on the first day of April, 1891, and situated in said city of Madison, in the State of Indiana, which tax is now delinquent; that this defendant is not seeking nor threatening or intending to levy any portion of said tax from any property outside of said city of Madison, in the State of Indiana.

Wherefore he prays that this action as to him abate.

LEANDER M. ROBINSON,
Treasurer of the City of Madison, Indiana.

S. J. BEAR,
Att'y for Defendant.

STATE OF INDIANA, *Jefferson County,* } *ss:*

Leander M. Robinson, treasurer of Madison, Indiana, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

(Signed) LEANDER M. ROBINSON.

Subscribed and sworn to before me this the 7th day of May, 1892.
[SEAL.] JOHN W. SENIOR,
Notary Public, J. C., Ind.

101 STATE OF INDIANA, } ss:
Marion County, }

Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

Wm. A. Markland, treasurer of the city of Kokomo, one of the defendants herein, separately appearing specially to contest the jurisdiction of the court over his person, avers that he is not now a resident of the county of Marion, in the State of Indiana, in which this action was brought and was not at the time this action was begun a resident of said county of Marion, and that at such date he was a resident of the city of Kokomo, in the county of Howard, in the State of Indiana, and ever since the date of the beginning of this suit he has continued to be and now is a resident of the city of Kokomo, in said county of Howard; that upon the filing of the complaint in this action a summons was issued by the clerk of the county of Marion, directed to the sheriff of Howard county, commanding him to summon this defendant to appear in this court upon the 10th day of May, 1892, to answer the complaint of the plaintiff in this action, which summons was served upon this defendant by the sheriff of Howard county, Indiana; that the only jurisdiction this court has of the person of this defendant was obtained by the issuing and service of such summons, and that this defendant has not appeared in this court in person or by attorney in this action prior to the filing of this special plea to the jurisdiction of the court.

102 That the taxes mentioned in the complaint of the plaintiff which this defendant is seeking to collect as treasurer of the city of Kokomo, and which taxes are now upon the tax duplicate of the city of Kokomo, in the possession of this defendant, are due to said city alone, and no part thereof is due or payable to any other person or corporation within or without the State of Indiana, and no part of said taxes is sought to be collected by this defendant for the benefit of the State of Indiana, but the whole of said taxes about to be collected by this defendant are for the sole use and benefit of the said city of Kokomo.

That this defendant is not jointly interested in any way with any of the other defendants in this action, and that he is not seeking to collect and has not at any time sought to collect any taxes involved in this suit except those placed upon the duplicate of the city of Kokomo and for its sole benefit as above stated, and that affiant or said city of Kokomo has no interest in any other taxes which other

defendants are seeking to collect; that if the plaintiff has any cause of action against this defendant by reason of the facts averred in the complaint, such cause of action is against him severally and alone and not jointly with any other defendant or defendants named in the complaint of the plaintiff.

Wherefore this defendant separately asks the court to adjudge that it has no jurisdiction of the person of this defendant in this action, and that the court dismiss the same as to him for want of such jurisdiction.

BLACKLIDGE, SHIRLEY & MOON,
Attorneys for Defendant.

103 STATE OF INDIANA, } ss:
Howard County, }

Wm. A. Markland, being duly sworn, says that the facts averred in the foregoing plea to the jurisdiction of the Marion superior court in the above-entitled cause are true.

W. A. MARKLAND, *City Treas.*

Subscribed and sworn to before me this 6th day of May, 1892.
[SEAL.] DORA MARTZ,
Notary Public.

104 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant C. E. Hiatt, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Xenia, Miami county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of the incorporated town of Xenia, Miami county, in the State of Indiana, and that as such treasurer he has in his possession the original tax duplicate of said town, but it is not his official duty to collect the taxes appearing thereon, but is by law the duty of the town marshal; that this defendant is not threatening to collect any taxes from the plaintiff railroad company.

105 Wherefore he prays that said cause as to him for said reasons abate.

C. E. HIATT.

STATE OF INDIANA, } ss:
County of Miami, }

C. E. Hiatt, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

C. E. HIATT.

Subscribed and sworn to before me this 6th day of May, 1892.
[SEAL.] ROSCOE KIMPLE,
Notary Public.

106 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Frank McCollough, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Johnson county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of the city of Franklin, Johnson county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said city, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Johnson.

107 Wherefore he prays that said cause as to him for said reasons abate.

FRANK MCCOLLOUGH.
W. T. PRITCHARD,
Att'y for Defendant.

STATE OF INDIANA, } ss:
County of Johnson, }

Frank McCollough, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

FRANK MCCOLLOUGH.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.] WM. T. PRITCHARD,
Notary Public, Johnson County, Indiana.

108 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant William A. Fulton, treasurer of the city of Anderson, Indiana, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of the city of Anderson, in Madison county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of said Marion county, in the State of Indiana; that this defendant is the treasurer of the city of Anderson, in Madison county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said city, and that it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking or threatening nor intend-
109 ing to levy or collect any part of said tax from any property outside of said city of Anderson.

Wherefore he prays that said cause as to him for said reasons abate.

WILLIAM A. FULTON,
Treasurer City of Anderson.

STATE OF INDIANA, } ss:
Madison County, }

William A. Fulton, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

WILLIAM A. FULTON.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.] FRANK G. EPPLY,
Notary Public in and for said County and State.

110 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant Aaron L. Bateman, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Bartholomew county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the town of Elizabethtown, in Bartholomew county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said town, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Bartholomew.

111 2. The defendant, for second plea in abatement herein, says that he is the treasurer of the town of Elizabethtown, Bartholomew county, in the State of Indiana; that as such town treasurer he holds the tax duplicate on which is placed and extended the assessment against the said plaintiff made by the State board of equalization; that said assessment is apportioned to German, Columbus, Wayne, Flat Rock, and Sand Creek townships, in said county, and the city of Columbus and the town of Elizabethtown and the town of Jonesville in proportion to the length of plaintiff's road extending through them, and said townships have assessed taxes upon said valuation, which are extended on said tax duplicate against plaintiff which is now in the county treasurer's possession.

He further avers that the board of commissioners of Bartholomew county, in the State of Indiana, has levied a tax on said property, which is placed and extended on said tax duplicate; also the State of Indiana has levied a tax by act of the legislature, which is also extended and placed on said tax duplicate for collection, and the city of Columbus has levied a tax on said property going through the same, which is placed and extended on said tax duplicate, all of which make up and constitute the tax described in the complaint as being levied against plaintiff upon said assessment by Bartholomew county.

He avers that the town of Elizabethtown also levied a tax on the

plaintiff's said property within its jurisdiction, which has been placed and extended on the tax duplicate of said town of Elizabethtown, and the said duplicate has been placed in the hands of this defendant for collection.

112 He avers that said town of Jonesville levied a tax on said property, which is extended on the tax duplicate of said town, and said duplicate is now in the treasurer's possession.

He avers that the said several townships or their trustees and the board of commissioners of Bartholomew county and said city of Columbus and said town of Elizabethtown and said town of Jonesville and the State of Indiana, who are entitled to said taxes levied respectively for them and the parties in interest, are not made parties to this action and should be made parties thereto.

Wherefore defendant prays an abatement of this action.

AARON L. BATEMAN.

STATE OF INDIANA, }
County of Bartholomew, } *ss:*

Aaron L. Bateman, being duly sworn, on his oath says that he is the defendant named in the foregoing two pleas in abatement, and that the same are true in substance and in fact.

AARON L. BATEMAN.

Subscribed and sworn to before me this 6th day of May, 1892.

[SEAL.] M. D. EWING,
Notary Public.

113 STATE OF INDIANA, }
Marion County, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Ephraim H. Ahlbrand, for separate answer herein, says that at the commencement of this action he was, has been ever since, and still is treasurer of the city of Seymour, in Jackson county, Indiana, and that as such treasurer he has in his possession the tax duplicate of said city, and that it is his official duty to collect the taxes thereon charged; that all the taxes appearing upon said duplicate against this plaintiff are due to said city and to no one else, and that neither he nor said city has any interest in or connection with the collection of any taxes by any one of the other defendants herein; that at the commencement of this action he was, has been ever since, and still is a *bona fide* resident of the city of Seymour, in Jackson county, in the State of Indiana, and during all of said time has kept his office only in said city and neither had or maintained any office or agency elsewhere, and that the Jackson

circuit court of said county had at the commencement of this suit and still has full authority and jurisdiction to try all questions involved herein so far as the same relates to this defendant.

114 Wherefore the said defendant Ephraim H. Ahlbrand prays that this action as to him abate, and for all other proper relief.

EPHRAIM H. AHLBRAND.

Subscribed and sworn to before me this 9th day of May, 1892.

[SEAL.] OSCAR H. MONTGOMERY,
Notary Public.

115 STATE OF INDIANA, }
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant William Wiseman, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Bartholomew county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the town of Jonesville, in Bartholomew county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said town, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Bartholomew.

116 2. The defendant, for second plea in abatement herein, says that he is the treasurer of the town of Jonesville, Bartholomew county, in the State of Indiana; that as such town treasurer he holds the tax duplicate on which is placed and extended the assessment against the said plaintiff made by the State board of equalization; that said assessment is apportioned to German, Columbus, Wayne, Flat Rock, and Sand Creek townsbips, in said county, and the city of Columbus and the town of Elizabethtown and the town of Jonesville in proportion to the length of plaintiff's road extending through them, and said townships have assessed taxes upon said valuation which are extended on said tax duplicate

against plaintiff, which is now in defendant's possession. He further avers that the board of commissioners of Bartholomew county, in the State of Indiana, has levied a tax on said property, which is placed and extended on said tax duplicate; also the State of Indiana has levied a tax by act of the legislature, which is also extended and placed on said tax duplicate for collection, and the city of Columbus has levied a tax on said property going through the same, which is placed and extended on said tax duplicate, all of which make up and constitute the tax described in the complaint as being levied against plaintiff upon said assessment by Bartholomew county. He avers that said town of Jonesville levied a tax on said property, which is placed and extended on the tax duplicate now in the possession of defendant. He avers that the said several townships or their trustees and the board of commissioners of Bartholomew county and said city of Columbus and said town of Eliza-
117 bethtown and said town of Jonesville or the trustees thereof and the State of Indiana, who are entitled to said taxes levied respectively for them, are the parties in interest and are not made parties to this action and should be made parties thereto.

Wherefore defendant prays an abatement of said action.

WM. WISEMAN.
HORD & EWING,
Att'ys for Def't.

STATE OF INDIANA, }
County of Bartholomew, } *ss:*

William Wiseman, being duly sworn, on his oath says that he is the defendant named in the foregoing two pleas in abatement, and that the same are true in substance and in fact.

WM. WISEMAN.

Subscribed and sworn to before me this 6th day of May, 1892.
[SEAL.] M. D. EWING,
Notary Public.

118 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Superior Court of Marion County, May Term, 1892.

THE CINCINNATI, RICHMOND AND FT. WAYNE RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Martin L. Strattan, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Wayne county, in said State of Indiana, and was not

at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of the city of Richmond, in said county and State, and that as such treasurer he has in his possession the tax duplicate of said city, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff on plaintiff's property located within the corporate limits of said city, and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any of plaintiff's property outside of said city of Richmond.

119 Wherefore he prays that said cause as to him for said reasons abate.

A. C. LINDEMUTH, *City Att'y.*

STATE OF INDIANA, }
County of Wayne, } *ss:*

Martin L. Strattan, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

MARTIN L. STRATTAN.

Subscribed and sworn to before me this 9th day of May, 1892.

JOSEPH E. MOORE,
[SEAL.] *Notary Public.*

120 STATE OF INDIANA, }
Marion County. }

In the Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO and St. Louis Railway Company
vs.
VICTOR M. BACKUS *et al.*

Separate Plea in Abatement by Morton McRea, Treasurer City of Marion.

Comes now Morton McRea, treasurer of the city of Marion, county of Grant and State of Indiana, one of the defendants in the above cause, and for his separate plea in abatement to the jurisdiction of the court over his person in this action says that he was at the commencement of this action and still is the treasurer of the city of Marion, county of Grant and State of Indiana, and has in his possession as such treasurer the tax duplicates of said city, and that it is his duty as such officer to keep said duplicates at his office in said city and to collect all taxes appearing thereon; that the only tax thereon against the plaintiff which he is seeking to collect is the tax appearing thereon against it and which is now delinquent; that he is not seeking, threatening, or attempting to collect the same or any part thereof from any property outside of said county; that at the commencement of this action he was and still

is a resident of the county of Grant and State of Indiana, and was not at the commencement of this action and is not now a resident of the county of Marion, in the State of Indiana.

121 Wherefore he demands that this action as to him abate.

BROWNLEE & PAULUS,
Att'ys for Defendant.

STATE OF INDIANA, }
Grant County. }

Morton McRea, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

MORTON McREA.

Subscribed and sworn to before me this 5th day of May, 1892.
WILSON ADDINGTON, *Cl'k C. C.*

122 STATE OF INDIANA, }
County of Marion, } *ss:*

In the Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS McCAY, *et al.*

The defendant Robert Montgomery, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of the city of Shelbyville, Shelby county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county; that this defendant is the treasurer of said city of Shelbyville, Shelby county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Shelby.

123 Wherefore he prays that said cause as to him for said reasons abate.

ROBERT MONTGOMERY.

STATE OF INDIANA, }
County of Shelby, } *ss:*

Robert Montgomery, being duly sworn, on his oath says that he

is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

ROBERT MONTGOMERY.

Subscribed and sworn to before me this 10th day of May, 1892.

JOHN R. WILSON, *Clerk.*

124 STATE OF INDIANA, *County of Marion,* } ss:

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS *et al.* } No. 43365.

The defendant John G. Grahs, one of the defendants in the above-entitled cause, for the purpose of entering a separate and special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Randolph county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the city of Union City, in Randolph county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said city of Union City, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and
125 which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said city of Union City.

Wherefore he prays that said cause as to him for said reasons abate.

STATE OF INDIANA, *County of Marion,* } ss:

John G. Grahs, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

JOHN G. GRAHS.

Subscribed and sworn to before me this tenth day of May, 1892.

JOHN R. WILSON, *Clerk.*

126 STATE OF INDIANA, }
County of Marion. }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY
vs.
ISAAC W. ST. JOHNS, Treasurer of the Town of Dunkirk, Indiana, *et al.*

Said defendant, Isaac W. St. Johns, treasurer of the town of Dunkirk, Indiana, for the purpose of entering a separate and special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of the town of Dunkirk, in Jay county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the incorporate town of Dunkirk, in Jay county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said town, and it is his official duty to collect all tax appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing thereon on said duplicate against said plaintiff and which is now delinquent; that he is not seeking
127 nor threatening nor intending to levy or collect any part of said tax from property outside of said county of Jay as aforesaid.

Wherefore he prays that said cause as to him for said reason abate.

— —.

Isaac W. St. Johns, being duly sworn, upon his oath says that he is one of the defendants named in the foregoing plea in abatement, and that the matters set out and contained therein are true in substance and in fact.

ISAAC W. ST. JOHNS, *Tr.*

Subscribed and sworn to before me this 5th day of May, 1892.
[SEAL.] JOHN T. SUTTON,
N. P. in and for Jay County, Indiana.

128 STATE OF INDIANA, *Jennings County,* } ss:

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant David B. Reeder, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Jennings county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the city of North Vernon, in Jennings county, in the State of Indiana, and has in his possession the tax duplicate of said city, and it is his official duty to collect the taxes thereon and all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant (plaintiff) and which is now delinquent; that he is not seeking nor threatening
129 nor intending to levy or collect any part of said tax from any property outside of said county of Jennings or said city of North Vernon.

Wherefore he prays that said cause as to him may abate for reasons above stated.

DAVID B. REEDER.

STATE OF INDIANA, *Jennings County,* } ss:

David B. Reeder, being duly sworn, on his oath says that he is the defendant in the foregoing plea in abatement named, and that the same is true in substance and in fact.

DAVID B. REEDER.

Subscribed and sworn to before me this 9th day of May, 1892.
[SEAL.] FRANK E. SINTO,
Notary Public.

130 STATE OF INDIANA, *Marion County.* }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
No. 43365.

The defendant Richard Carter, one of the defendants in the above-

entitled cause of action herein, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of the defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, *and* says that this defendant was at the commencement of this suit and still is a resident of the city of Columbus, Bartholomew county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of said Marion county, in the State of Indiana; that this defendant is treasurer of the city of Columbus, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said city of Columbus, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any prop-
131 erty outside of said city of Columbus, in the county of Bartholomew.

2nd. The defendant, for second plea in abatement herein, says that he is the treasurer of the city of Columbus, Bartholomew county, in the State of Indiana; that as such treasurer he holds the tax duplicate on which is placed and extended the assessment against said plaintiff, made by the proper authority of law; that the city of Columbus has levied a tax on the property and road of the plaintiff in said city of Columbus, which is placed and extended on the said tax duplicate of said city of Columbus, which makes up and constitutes the tax described in the complaint as being levied against plaintiff upon the said assessment by said city of Columbus, in said county and State. He avers that said city of Columbus levied a tax on said property of plaintiff. He avers that said city of Columbus, *who* is entitled to said taxes and a party in interest, is not made a party to this action and should be made a party thereto.

Wherefore this defendant prays an abatement of said action and for all proper relief.

ORR & SWENGEL,
Att'ys for Defendant.
JOHN C. ORR,
City Att'y of Columbus, Indiana.
RICHARD CARTER,
By ORR & SWENGEL, *Att'ys.*

132 STATE OF INDIANA, }
Marion County. }

Wilson S. Swengel, being duly sworn, on his oath says that he is one of the attorneys herein for said defendant, Richard Carter, named in the foregoing two pleas in abatement herein, and upon his oath says that the said pleas in abatement are true in substance and in fact.

WILSON S. SWENGEL.

Subscribed and sworn to before me this 10 day of June, 1892.
JOHN R. WILSON, *Clerk.*

I33 And afterwards, to wit, on the 11th day of May, 1892, being the 9th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceeding was had herein, viz:

Comes now Ernest B. Thomas, treasurer of the town of Royal Centre, Cass county, Indiana, by counsel, and files his plea in abatement to the plaintiff's complaint herein, as follows, viz:

134 STATE OF INDIANA, } ss:
County of Marion, }

In the Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant Ernest B. Thomas, one of the defendants in the above-entitled cause, for the purpose of entering a special appearance and a special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Cass county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county; that this defendant is the treasurer of Royal Centre, Cass county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said town, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said town of Royal Centre and county of Cass.

135 Wherefore he prays that said cause as to him for said reasons abate.

— —.

STATE OF INDIANA, } ss:
County of Marion, }

Ernest B. Thomas, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

E. B. THOMAS,
Town Treas.

Subscribed and sworn to before me this 10th day of May, 1892.
[SEAL.] ANDREW M. SWEENEY,
Clerk Supreme Court.

136 And afterwards, to wit, on the 13th day of May, 1892, being the 11th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings was had herein:

"Comes now M. C. Jay, treasurer of Cambridge City, Indiana, defendant, by counsel, and enters his special appearance herein, and files his plea in abatement to the plaintiff's complaint in this cause as follows, viz:"

137 In the Superior Court of Marion County, Indiana, Room 3.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
} Cause No. 43365.

Now comes M. C. Jay, one of the defendants in the above-entitled cause, and for the purpose of entering a separate special plea in abatement to the jurisdiction of the said superior court of Marion county over the person of this defendant for the reason that said action was begun and is still pending in the said superior court of Marion county, in the State of Indiana, — that this defendant was at the time this suit was begun and still is a resident of Wayne county, in said State of Indiana; that he was not at the commencement of this suit and is not now a resident of Marion county, in said State; that a summons was served upon him in the above-entitled cause by the sheriff of Wayne county, Indiana, in the name of "M. C. Jay, as tax collector of Cambridge City, Wayne Co.," at which time he was the clerk of the corporation of said Cambridge City; that he is not, as such clerk, the collector of taxes for said town; that the statutes of the State of Indiana creating municipal corporations make it the duty of the marshal thereof to collect all taxes placed
138 on the tax duplicate of said town; that said town now has and did have at the commencement of said suit a town marshal, in whose hands and possession said tax duplicate then was and still is.

Wherefore defendant prays that said suit may abate.

M. C. JAY.

Subscribed and sworn to before me this 12th day of May, 1892.
[SEAL.] DANIEL W. MASON,
Notary Public.

139 And afterwards, to wit, on the 14th day of May, 1892, being the 12th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceeding was had herein, viz:

"On plaintiff's motion, the defendants herein who have not answered the complaint in this cause are ruled to answer the same by the 28th day of May, 1892."

And afterwards, to wit, on the 25th day of May, 1892, being

the 21st judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

Comes now James K. Armstrong, treasurer of Tipton county, Indiana, and Charles L. Woll, treasurer of Cass county, Indiana; Thomas A. Jones, treasurer of Rush county, Indiana, and Paul Kerr, treasurer of the city of Rushville, Indiana, by counsel, and each enter their special appearance and file their separate plea in abatement herein to the plaintiff's complaint; said pleas in abatement are as follows, viz:

140 STATE OF INDIANA, } ss:
County of Marion, }

Superior Court, Indianapolis, Room 3.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* JAMES K. ARMSTRONG, as Treasurer of Tipton County, Indiana, *et al.* } Separate Answer of James K. Armstrong.

Comes now James K. Armstrong and enters his special appearance for the purpose of filing this answer, and by way of his separate answer in abatement says that he is a resident of the county of Tipton, in said State of Indiana, and was a resident of said county at the date of the bringing of the above action; that he resided in the 36th judicial circuit of the State of Indiana, which circuit consists of the counties of Howard and Tipton; that the circuit of the superior court of the county of Marion, in said State, is confined exclusively to said county of Marion; that he is the only treasurer of Tipton county, and that no one of his codefendants has any interest in the alleged cause of action against himself or the county of Tipton; that said cause of action, as claimed by the plaintiff, is seeking to restrain this defendant from collecting taxes of said county of Tipton as treasurer of said county.

Wherefore defendant says that this court has no jurisdiction of the person of this defendant nor of the subject-matter of the said action, and that this suit as to him should abate.

J. K. ARMSTRONG.

Subscribed and sworn to before me this 23rd day of May, 1892.

[SEAL.] GEO. H. GIFFORD,
Notary Public.

141 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court, February Term, 1892.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*

The defendant Charles L. Woll, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Cass county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Cass county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said defendant and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Cass.

142 Wherefore he prays that said cause as to him for said reasons abate.

CHAS. L. WOLL,
Treas. Cass Co.

STATE OF INDIANA, } ss:
County of Cass, }

Charles L. Woll, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

CHAS. L. WOLL.

Subscribed and sworn to before me this 16th day of May, 1892.
[SEAL.]
C. W. FISK,
Clerk Cass Circuit Court.

143 STATE OF INDIANA, }
County of Marion. }

In the Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*

Thomas A. Jones, treasurer of Rush county, one of the defendants

in the above-entitled cause, — makes special appearance herein for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Rush county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county.

That this defendant is the treasurer of Rush county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Rush.

144 Wherefore he prays that said cause as to him for said reasons abate.

JOHN Q. THOMAS,
Att'y for Thos. A. Jones, Treas.

STATE OF INDIANA, }
County of Rush. }

Thos. A. Jones, treasurer of Rush county, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

THOMAS A. JONES,
Treas. Rush Co.

Subscribed and sworn to before me this 24th day of May, 1892.
[SEAL.] JAMES M. HILDRETH,
Clerk Rush Circuit Court.

145 STATE OF INDIANA, }
Marion County. }

In Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY
vs.
VICTOR M. BACKUS *et al.*

Paul Kerr, treasurer of the city of Rushville, one of the defendants herein, separately appearing specially to contest the jurisdiction of the court over his person, avers that he is not now a resident of the county of Marion, in the State of Indiana, in which this action was brought, and was not at the time this action was begun a resident of said county of Marion, and that — such dates he was and has ever since been continuously a resident of Rushville, located in the county of Rush, State of Indiana, and is now such resident;

that upon the filing complaint in this action a summons was issued by the clerk of the county of Marion, directed to the sheriff in the county of Rush, commanding him to summons defendant to appear in this court upon the — day of May, 1892, to answer the complaint of plaintiff in this action, which summons was served on this defendant by the sheriff of Rush county, Indiana; that the only jurisdiction this court has, if any, of the person of this defendant and the subject-matter of said complaint was attempted to be obtained by the issue and service of said summons; that the defendant has not appeared in this court in person or by attorney in this action
146 prior to the filing of this special plea to the jurisdiction of the court; that the taxes mentioned in the complaint of plaintiff which this defendant is seeking to collect as treasurer of the city of Rushville and which taxes are now on tax duplicate of the city of Rushville, in the possession of this defendant, are due to said city alone, and no part thereof is due or payable to any other person or corporation in or without the State of Indiana; that no part of said taxes is sought to be collected by this defendant for the benefit of the State of Indiana, but the whole of said taxes about to be collected by said defendant are for sole use and benefit of said city of Rushville; that this defendant is not jointly interested in any way with any of the other defendants in this action, and that he is not seeking to collect and has not at any time sought to collect any taxes involved in this suit except for its sole benefit as above stated; that neither this defendant or said city of Rushville has any interest in any other taxes which other defendants are seeking to collect; that if the plaintiff has any cause of action against this defendant by reason of the facts averred in the complaint, such cause of action is against him severally and alone and not jointly with any defendant or defendants named in the complaint of plaintiff.

Wherefore this defendant separately asks the court to adjudge that it has no jurisdiction of the person of this defendant in this action, and that the court dismiss the same as to him for want of such jurisdiction.

JOHN Q. THOMAS,
Att'y for Def't Paul Kerr, Treas.

147 STATE OF INDIANA, } *ss:*
County of Rush, }

Paul Kerr, treasurer of the city of Rushville, being duly sworn, upon his oath says that the facts averred in the foregoing plea to the jurisdiction of the Marion superior court in the above-entitled cause are true.

PAUL KERR,
Treas. City Rushville, Ind.

Subscribed and sworn to before me this 24th day of May, 1892.
[SEAL.] ARTHUR B. IRVIN,
Notary Public.

148 And afterwards, to wit, on the 14th day of June, 1892, being the 8th judicial day of the June term, 1892, of said court, before the same honorable judge, the following proceedings were had herein, viz:

Come now Aaron T. Swoveland, the treasurer of the city of Windfall, in Tipton county, Indiana; James R. Casto, marshal of the town of Reynolds, in White county, Indiana; John A. Jenkins, treasurer of Clark county, Indiana, and William B. Vesey, treasurer of the city of Jeffersonville, Clark county, Indiana, by counsel, and each enter their special appearance herein and file their separate plea in abatement to the plaintiff's complaint in this cause as follows viz:

149 STATE OF INDIANA, }
Marion County. }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

Comes now the defendant Aaron F. Swoveland, one of the defendants in the above-entitled cause, for the purpose of entering a separate and special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, — that this defendant was at the time of the commencement of this suit and still is a *bona fide* resident of the town of Windfall City, in the county of Tipton, in the State of Indiana, and was not at the time of the commencement of this suit and is not now a resident of Marion county, in the State of Indiana; that this defendant is the treasurer of the town of Windfall City, in the county of Tipton and State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said town of Windfall City, and it is his official duty as such treasurer to collect all taxes appearing thereon; that the only tax against the plaintiff herein which this defendant is seeking or threatening to collect is the tax ap-
150 pearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking or threatening nor intending to levy or collect any part of said tax from any property outside of said town of Windfall City, in the county of Tipton and State of Indiana.

Wherefore he prays that said cause as to him for said reasons abate.

AARON F. SWOVELAND.

STATE OF INDIANA, } ss:
County of Tipton, }

Aaron F. Swoveland, being duly sworn, upon his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

AARON F. SWOVELAND.

Subscribed and sworn to before me this 25th day of May, 1892.

W. O. DEAN,
Notary Public.

151 STATE OF INDIANA, } ss:
Marion County, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS and Others.

The defendant James R. Casto, says that he is one of the defendants in the above-entitled cause and the defendant who is described as J. R. Casti, and for the purpose of entering a separate plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of the town of Reynolds, in the county of White and State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in said State of Indiana; that at the commencement of this suit this defendant was the marshal of said town of Reynolds aforesaid, and as such marshal he had in his possession the tax duplicate of said town, and it was his official duty to collect all taxes appearing thereon; that the only taxes against the plaintiff which this defendant was or is seeking or threatening to collect is the tax then and now appearing on said duplicate against said plaintiff and which was at the commencement
152 of this suit and is now delinquent; that he is not and was not at the commencement of this suit seeking or threatening or intending to levy or collect any part of said tax from any property outside of said town of Reynolds, and he is not now intending or threatening nor has he ever intended or threatened to do any act looking towards the collection of said taxes outside of said town of Reynolds aforesaid.

That on the 2nd day of May, 1892, at the regular annual election for the election of officers in and for said town of Reynolds, which election was duly and legally held by the proper officers in that behalf, one Charles Buss was by the voters of said town of Reynolds duly and legally elected marshal in and for said town of Reynolds;

and afterwards, on the 9th day of May, 1892, said Charles Buss was duly sworn to perform the duties of said office of marshal of said town for the term of his election, and filed his bond with sufficient freehold sureties, with a penalty double the amount of the estimated tax duplicate of said town for the current year, which bond was by the board of trustees of said town fully and legally accepted and approved, and said Charles Buss thereupon immediately entered upon the duties of said office of marshal, and has ever since been and now is the duly and legally elected, qualified, and acting marshal in and for said town of Reynolds.

Wherefore this defendant prays that this cause as to him for said reasons abate.

HARTMAN & HAMELLE,
Attorneys for Defendant Casto.

153 STATE OF INDIANA, } ss :
County of White, }

James R. Casto, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

JAMES R. CASTO.

Subscribed and sworn to before me this 7th day of June, 1892.
[SEAL.] W. H. HAMELLE,
Notary Public.

154 STATE OF INDIANA, } ss :
Marion County, }

Marion Circuit Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant John A. Jenkins, treasurer of the county of Clark, of the State of Indiana, *severing* and appearing specially herein for the purpose of objecting to and protesting against the jurisdiction of this honorable court over his person, pleads to the jurisdiction of said court and says—

That he, the said John A. Jenkins, resides and for more than five years last past has resided in Clark county, State of Indiana, and has not been during said time and was not at the commencement of this suit a resident of Marion county, of the State of Indiana.

That this defendant has charge of the tax duplicates of said county of Clark, but has not attempted or threatened to collect taxes from the plaintiff from any of its property other than such as is located in said county of Clark.

Wherefore the said defendant says that this suit ought to abate, and that said court ought not to further maintain jurisdiction of said cause as against him.

____ ____,
Attorney for John A. Jenkins.

155 STATE OF INDIANA, } ss:
Clark County, }

Melchert Z. Stannard, being duly sworn, on his oath states that he is the attorney for John A. Jenkins, treasurer of said county of Clark, who is one of the defendants in the foregoing and above-entitled cause, and that he makes this affidavit for and on behalf of said defendant; that he, said affiant, is well acquainted with said John A. Jenkins, and that all the matters set forth and contained in the above and foregoing instrument and plea in abatement are true; that said John A. Jenkins is now absent from the State of Indiana, and affiant is informed and believes will not return to said State until after the 20th day of June, 1892; and affiant further saith not.

MELCHERT Z. STANNARD.

Subscribed and sworn to before me this 7th day of June, 1892.
[SEAL.] HERMAN PREEFER,
Notary Public C. C.

156 STATE OF INDIANA, } ss:
County of Marion, }

In the Marion Superior Court, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant William B. Veasey, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Clark county, in the State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county; that this defendant is the treasurer of the city of Jeffersonville, Clark county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Clark.

157 Wherefore he prays that said cause as to him for said reasons abate.

WILLIAM B. VEASEY,
By M. Z. STANNARD,
His Attorney.

STATE OF INDIANA, } ss:
County of Clark, }

William B. Veasey, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

WILLIAM B. VEASEY.

Subscribed and sworn to before me this 7th day of May, 1892.

[SEAL.] HERMAN PREEFER,
Notary Public.

158 STATE OF INDIANA, } ss:
County of Marion, }

In the Superior Court of Marion County, May Term, 1892.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, *et al.*

The defendant W. F. Cassady, one of the defendants in the above-entitled cause, for the purpose of entering a separate special plea in abatement to the jurisdiction of said court over the person of this defendant for the reason that said action is commenced in the superior court of Marion county, in the State of Indiana, says that this defendant was at the commencement of this suit and still is a resident of Owen county, in said State of Indiana, and was not at the commencement of this suit and is not now a resident of Marion county, in the State of Indiana.

That this defendant is the treasurer of Owen county, in the State of Indiana, and that as such treasurer he has in his possession the tax duplicate of said county, and it is his official duty to collect all taxes appearing thereon; that the only tax against the plaintiff which this defendant is seeking or threatening to collect is the tax appearing on said duplicate against this plaintiff and which is now delinquent; that he is not seeking nor threatening nor intending to levy or collect any part of said tax from any property outside of said county of Owen.

159 Wherefore he prays that said cause as to him for said reasons abate.

W. F. CASSADY.

STATE OF INDIANA, } ss:
County of Owen, }

William F. Cassady, being duly sworn, on his oath says that he is the defendant named in the foregoing plea in abatement, and that the same is true in substance and in fact.

W. F. CASSADY.

Subscribed and sworn to before me this 5th day of May, 1892.

[SEAL.] RANKIN MCCLAREN,
Notary Public.

160 And afterwards, to wit, on the 15th day of June, 1892, being the 9th judicial day of the June term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

Comes now the defendant Jacob H. Thomas, by counsel, and files his verified motion for a change of venue of this cause from the superior court of Marion county, Indiana, in these words, viz:

161 STATE OF INDIANA, } ss:
Marion County, }

In the Marion Superior Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.* } No. 43365.

Jacob H. Thomas, being duly sworn, says he is one of the defendants in the above-entitled cause, and that he cannot have a fair and impartial trial thereof before the Honorable Lewis C. Walker, judge of the Marion superior court, in room 3, on account of the prejudice and bias of said judge, nor does the affiant believe that he can get a fair and impartial trial of said cause before either of the judges of the superior court on account of prejudice and bias of said judges against his cause of defense.

Wherefore the defendant prays for a change of venue.

JACOB H. THOMAS,
Treas. Shelby County, Ind.

STATE OF INDIANA, } ss:
Marion County, }

Subscribed and sworn to before me, the undersigned, a notary public in and for said county and State.

Witness my hand and official seal this 9th day of June, 1892.

[SEAL.] BERTHA E. WILLIAMS,
Notary Public.

162 And the court, having seen and inspected the same and being fully advised in the premises, does now sustain the said application for a change of venue herein, and the plaintiff now moves the court to strike the said verified motion and application from the files; which motion is now overruled by the court; to which ruling the plaintiff at the time excepts and nine (9) days are allowed for the filing of a bill of exceptions.

It is therefore ordered by the court that the venue of this cause be changed to the circuit court of Marion county, Indiana.

It is further ordered that the said defendant do perfect the said change within ten (10) days. To all of which the plaintiff at the time excepts and nine (9) days are allowed for the filing of a bill of exceptions herein.

And afterwards, to wit, on the 16th day of June, 1892, being the 10th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceeding was had herein, viz:

Comes now the plaintiff, by its counsel, and presents a bill of exceptions in this cause, which is examined by the court, signed, filed, and ordered to be made a part of the record in this cause. Said bill of exceptions is in the words and figures following, viz:

163 In the Marion Superior Court, Room No. 3.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY *vs.* VICTOR M. BACKUS *et al.* } No. 43365.

Bill of Exceptions.

Be it remembered that on the 15th day of June, 1892, the same being the — day of the June, 1892, term of said court, the following pleas and proceedings were had in said cause before the Hon. Lewis C. Walker, judge of said court:

Jacob H. Thomas, one of the defendants herein, who on the — day of May, 1892, appeared specially herein, by counsel, for the purpose of filing a plea to the jurisdiction of this court, which plea was duly filed herein and is in the words and figures following, to wit, and who had not appeared herein otherwise than by such special appearance, filed herein, by counsel, his affidavit for a change of venue from the Hon. Lewis C. Walker, and also from the other two judges of said court, on the ground of the bias and prejudice of the said Hon. Lewis C. Walker, and also of the other two judges of this court, against the defendant Thomas; which said affidavit was in the words and figures following.

164 And thereupon the plaintiff, by its counsel, moved that said affidavit be stricken from the files on the following grounds, to wit:

1. The defendant Thomas is in court only under a special appearance for the purpose of contesting the jurisdiction of this court upon a claim which implies that this court could not obtain jurisdiction over him even by his voluntary general appearance herein.

2. Because it is too late for a motion to change the venue under rule 21 of the Marion superior court.

3. Because the defendant Thomas, being one of several defendants, has not the right to have the venue changed by reason of any bias or prejudice of the judges of said court against the defendant Thomas.

And the court, having heard the parties, by their respective counsel, and being sufficiently advised in the premises, overruled said motion of plaintiff that said affidavit be stricken from the files; to which ruling the plaintiff at the time excepted, and the court thereupon granted the affidavit and application of defendant

Thomas for a change of venue and ordered that the venue of the cause be changed to the Marion circuit court; to which ruling and order of the court the plaintiff at the time excepted.

165 And the court thereupon granted to plaintiff nine days in which to file its bill of exceptions.

And now, on this 15th day of June, 1892, being within the time limited for filing a bill of exceptions herein, the plaintiff presents this its bill of exceptions and prays that the same may be signed, sealed, and made a part of the record in this cause, which is done this 15th day of June, 1892.

LEWIS C. WALKER, *Judge.*

166 STATE OF INDIANA, } ss:
County of Marion, }

I, John R. Wilson, clerk of the superior court within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the entries of proceedings had in said superior court in this cause, No. 43365, as appear from the records of said court now in my custody and keeping.

And I further certify that I now transmit herewith all of the original papers on file in my office belonging to said cause.

In testimony whereof I have hereunto subscribed my [SEAL.] name and affixed the seal of said superior court, at my office, in the city of Indianapolis, this 16th day of June, 1892.

JOHN R. WILSON, *Clerk.*

167 And afterwards, to wit, on the 18th day of June, 1892, being the 42d judicial day of the May term, 1892, of the circuit court of Marion county, Indiana, before the Honorable Edgar A. Brown, sole judge thereof, the following proceedings were had herein, viz:

Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY CO. *vs.* VICTOR M. BACKUS *et al.* } No. 6215.

Comes the plaintiff, by its counsel, and files its separate and several demurrer to the separate and several answers of defendants Thomas McCay, Charles L. Woll, Ernest B. Thomas, George W. Hoffman, Hiram A. B. Moorhous, George Burkitt, Daniel Boshour, Elihu B. Dibbell, Marcus H. Hemphill, Samuel A. Martindale, Amos A. Covalt, William A. Markland, James K. Armstrong, William C. Barnard, Thomas E. Valentine, Frank McCullough, William J. May, Aaron M. Bateman, Richard Carter, William H. Demarre, Leander M. Robinson, Charles B. Curtis, David B. Reeder, Jacob H. Thomas, Robert Montgomery, Thomas J. Jones, Paul Kerr, William N. Young, Martin L. Strattan, M. C. Jay, John R. Hays, Isaac W. St. John, George W. Veal, John G. Grahs, Albert W. Saint, John

173 And each of the aforesaid defendants separately say- that this action was brought against him in his official character as above designated, and at the commencement of the action he was and ever since was and now is — resident of the county in which he was and is now acting as such officer; and each of the aforesaid defendants against whom this action was brought as treasurer of a county as mentioned above separately says that as such treasurer he has in his possession the tax duplicate of his county, and it is his official duty to collect all taxes appearing thereon, and the only tax against the plaintiff which he is seeking or threatening to collect is the tax appearing on said duplicate against said plaintiff and which is now delinquent; and each of the aforesaid defendants against whom this action was brought as treasurer of cities or towns as above shown separately say that he is making no attempt to collect any taxes from the plaintiff except such as now appears on the tax duplicate of said city or town, which duplicate is now in his hands as such treasurer, and said taxes are now delinquent.

Wherefore the aforesaid defendants each separately say- that this court has no jurisdiction of his person.

CLAYPOOL & CLAYPOOL,
Attorneys for Defendants.

STATE OF INDIANA, } *ss:*
Marion County, }

Solomon Claypool on his oath states that he has read over and knows the contents of the foregoing answer and is informed and believes that the same is true.

SOLOMON CLAYPOOL.

Subscribed and sworn to this 24th day of June, 1892.
[SEAL.] BERTHA E. WILLIAMS,
Notary Public.

174 And now comes the plaintiff, by counsel, and files its separate and several demurrer to each of said separate answers herein:

175 In the Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.* } No. 6215.

The plaintiff demurs to the separate and several answers in abatement of the defendants Simeon S. Bosserman, Allen W. Reynolds, Andrew O. Castleman, Joseph D. Vurpillar, H. F. Small, G. B. Clark, A. F. Swoveland, William Dark, John A. Jenkins, W. V. Veasey, Levy H. Scott, Jacob Best, A. E. Rust, William P. Cook, and William N. McCollough, on the ground that said answers do

not, nor does any of them, state facts sufficient to constitute a cause of abatement of said action or to constitute a defense to said action.

BUTLER, SNOW & BUTLER,
S. O. PICKENS,
Attorneys for Plaintiff.

176 And the court, being fully advised in the premises, sustains the said demurrer, to which ruling of court the defendants separately and severally at the time except, and now the defendants are each and all ruled to answer over.

And the plaintiff now, leave of court first had, files and appends to complaint a verification thereof, and the plaintiff now moves the court for a temporary injunction against each and all of the defendants herein and files proof of notice given to defendants of intention to file such motion for a temporary injunction, and plaintiff also now tenders its bonds conditioned for the payment of all damages and costs which might accrue by reason of said temporary injunction, and, the defendants objecting to the sufficiency of said bond, the court does now approve the same and requires a showing as to sufficiency of sureties, and in opposition to said motion for a temporary injunction files the affidavits of Claude Matthews, John O. Henderson, and Ivan N. Walker, and comes again the plaintiff and moves the court to reject and strike out said affidavits.

And afterwards, to wit, on the 9th day of July, 1892, being the 60th judicial day of the May term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

In the Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*
} No. 6215.

Comes now the complainant, by its attorneys, and offers to consent that the court may order the moneys in the hands of the clerk deposited as a tender in this cause to be paid over to the several county, city, and town treasurers, marshals, and tax collectors, according as they may be entitled to the same as shown by the complaint herein, such payment to stand as payment made as of the dates respectively when the same, respectively mentioned in the complaint, were tendered, and to be without prejudice to the rights of either party to this cause.

177 And afterwards, to wit, on the 5th day of October, 1892, being the 27th judicial day of the September term, 1892, of said court, before the same honorable judge, the following proceedings was had herein:

"Comes now the defendant M. C. Jay, by D. W. Mason, his attorney, and files his separate answer to the complaint herein as follows:

In the Marion C. C., Sept. Term, Cause No. 6215.

THE PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS R. W. Co.
vs.
VICTOR M. BACKUS *et al.* } No. 6215.

Now comes M. C. Jay, one of the defendants in the above-entitled cause, — for separate answer denies each and every material allegation in plaintiff's complaint.

D. W. MASON,
Att'y for M. C. Jay."

178 And afterwards, to wit, on the 2 day of December, 1892, being the 23rd judicial day of the November term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

"Come now the defendants, by their respective counsel, and each and all file their answer in general denial to the complaint herein as follows, viz:

STATE OF INDIANA, } ss:
Marion County, }

In the Marion Circuit Court.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.* } No. 6215. Answer.

Comes the defendants, by their attorneys, and each and every one of the defendants for answer to the complaint deny each and every allegation therein contained.

A. G. SMITH, *Att'y General.*
CLAYPOOL & CLAYPOOL,
W. A. KETCHAM,
Att'ys for Def'ts."

179 And now come the parties, by their respective attorneys, and, by agreement made in open court, a jury is waived and this cause is submitted to the court for trial and final decree.

And thereupon the court, having heard the evidence and the arguments of counsel and being fully advised in the premises, does now order; adjudge, and decree:

First. That the equity of this cause is with the defendants.

Second. And that a perpetual injunction as prayed by plaintiff in its bill of complaint herein be, and the same is hereby, denied by the court.

Third. And it is further ordered, adjudged, and decreed by the court that the defendants have and recover of and from said plain-

tiff their costs and charges by them in and about their defense in this behalf laid out and expended, taxed at $—.

To which order, judgment, and final decree of the court the plaintiff there and then excepted.

And thereupon the plaintiff, by its counsel, filed and submitted to the court its motion for a new trial of this cause and its written reasons in support of said motion; which said motion and written reasons read in the words and figures following, to wit:

180 In the Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.*

Motion for New Trial.

The plaintiff in the above-entitled cause moves the court for a new trial thereof on the following grounds:

1. The finding, decision, and decree of the court is not sustained by the evidence.

2. The finding, decision, and decree of the court is contrary to law.

3. For error of law occurring at the trial and excepted to by the plaintiff in this, to wit:

The court erred in excluding the following extracts from the official report of the State board of equalization for 1890, offered by the plaintiff, to wit:

(From pages 3 and 4 of said report.)

Proceedings of the State Board of Equalization for the Year 1890.

STATE OF INDIANA, OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *June* 16, 1890.

In accordance with an act of the General Assembly of the State of Indiana entitled "An act concerning taxation," approved March 29, 1881, the board of equalization within and for the State of Indiana convened at the office of the auditor of State and organized as required by law.

The following members were present: Ira J. Chase, Bruce
181 Carr, J. A. Lemcke, and Charles F. Griffin, who took and subscribed to the following oath:

We, and each of us, do solemnly swear that we will support the Constitution of the United States and the constitution of the State of Indiana, and that we will faithfully and impartially

discharge our duties as members of the State board of equalization to the best of our ability.

IRA J. CHASE,
Lieutenant Governor.
BRUCE CARR,
Auditor of State.
J. A. LEMCKE,
Treasurer of State.
CHARLES F. GRIFFIN,
Secretary of State.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin, members of the State board of equalization, who were sworn according to law and subscribed their names hereto.

In witness whereof I have hereunto set my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

And thereupon, on motion of Bruce Carr, Alvin P. Hovey was chosen as president and Ira J. Chase as president *pro tem.*, and John W. Coons, deputy auditor of state, was chosen secretary of the board and took and subscribed to the following oath:

I, John W. Coons, do solemnly swear that I will sup-
182 port the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of equalization to the best of my ability.

JOHN W. COONS.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named John W. Coons, who was sworn according to law and subscribed his name hereto.

Witness my hand and official seal this 16th day of June, 1890.

[L. S.] WILLIAM T. NOBLE,
Clerk Supreme Court.

Upon motion of Bruce Carr, the secretary was instructed to notify the several railroad companies who desire to make statements in behalf of their respective companies that the board will hear such arguments from Monday, June 23, to June 30, inclusive, and thereafter the board proceed to equalize and assess the railroads.

And thereupon the board adjourned.

IRA J. CHASE,
President pro Tem.

Attest: J. W. COONS, *Secretary.*

INDIANAPOLIS, *June* 4, 1890.

The board met pursuant to adjournment.

183 Present: Ira J. Chase, Bruce Carr, and J. A. Lemcke, and Governor Hovey now took and subscribed to the following oath:

I, Alvin P. Hovey, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully and impartially discharge my duties as a member of the State board of equalization to the best of my ability.

ALVIN P. HOVEY.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, who was sworn according to law.

In witness whereof I have hereunto set my hand and seal this 24th day of June, 1890.

GEORGE U. BINGHAM,
Notary Public.

(From page 7 of said report.)

"INDIANAPOLIS, *June* 25, 1890.

The board met pursuant to adjournment.

Present: Alvin P. Hovey, Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin.

Col. H. B. Du Barry, representing the Pennsylvania system, made a lengthy statement in behalf of his several roads, showing to the board that the valuations of his road, in comparison with others, were excessive and should be reduced, etc., and thereupon the board adjourned until to-morrow morning at 10 o'clock.

ALVIN P. HOVEY,
President of Board.

Attest: JOHN W. COONS,
Secretary of Board."

184 (From pages 12 and 13 of said report.)

INDIANAPOLIS, *July* 11, 1890.

The board met pursuant to adjournment, all members present.

The board now resumed the valuations and assessments of the roads and continued the same during the entire day, and the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon, and the same was ordered to be spread upon record and to stand as the assessment of the railroad property denominated "railroad track, rolling stock, and improvements on right of way" for the year 1890; which assessment is in the words and figures following, to wit:

(From pages 14, 15, 16, and 20.)

"*Table No.* 1."

Value per mile of main track, second main and side track, rolling stock, and improvements on right of way and in daily use for railroad purposes as fixed by the State board of equalization for the purpose of taxation for the year 1890.

Chicago, St. Louis & Pittsburgh:

416.64	miles	main track	per mile	$10,500
93.93	"	side track	" "	2,500
416.64	"	rolling stock	" "	2,700
Improvements on right of way				210,935

185 Cincinnati & Richmond:

7.96	miles	main track	per mile	$8,000
.95	"	side track	" "	2,500
7.96	"	rolling stock	" "	2,700
Improvements on right of way				17,200

Jeffersonville, Madison & Indianapolis:

114.41	miles	main track	per mile	$12,000
4.23	"	second main	" "	7,000
26.98	"	side track	" "	2,500
114.41	"	rolling stock	" "	1,600
Improvements on right of way, including branches				48,410

Madison branch J., M. & I:

44.90	miles	main track	per mile	$4,500
9.95	"	side track	" "	1,500
44.90	"	rolling stock	" "	1,600

Cambridge branch J., M. & I.:

42.19	miles	main track	per mile	$4,500
3.78	"	side track	" "	1,500
42.19	"	rolling stock	" "	1,600

Cambridge extension J., M. & I.:

20.85	miles	main track	per mile	$4,500
1.54	"	side track	" "	1,500
20.85	"	rolling stock	" "	1,600

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Equalization*, 1890.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Bartholomew county:														
Jeffersonville, Madison & Indianapolis	22.18	$12,000	$266,160				2.79	$2,500	$6,975	22.18	$1,600	$35,488	$8,560	$317,183
Madison branch J., M. & I.	8.55	4,500	38,475				3.02	1,500	4,530	8.55	1,600	13,680		56,685
Cambridge branch J., M. & I.	11.38	4,500	51,210				.88	1,500	1,320	11.38	1,600	18,208		70,738
Blackford county:														
Chicago, St. Louis & Pittsburg	13.66	10,500	143,430				1.57	2,500	3,925	13.66	2,700	36,882	1,040	185,277
Cass county:														
Chicago, St. Louis & Pittsburg	49.63	10,500	521,115				16.02	2,500	40,050	49.63	2,700	134,001	57,960	753,126
Clarke county:														
Jeffersonville, Madison & Indianapolis	20.84	12,000	336,480	2.58	7,000	18,060	10.46	2,500	26,150	28.04	1,600	44,864	9,130	434,684
Fayette county:														
Cambridge extension J., M. & I.	8.43	4,500	37,935				.39	1,500	585	8.43	1,600	13,488	300	52,308
Floyd county:														
Jeffersonville, Madison & Indianapolis	1.94	12,000	23,280	1.65	7,000	11,550	1.23	2,500	3,075	1.94	1,600	3,104	4,800	45,809
Grant county:														
Chicago, St. Louis & Pittsburg	25.61	10,500	268,905				3.80	2,500	9,500	25.61	2,700	69,147	3,595	351,147
Hancock county:														
Chicago, St. Louis & Pittsburg	18.49	10,500	194,145				2.88	2,500	7,200	18.49	2,700	49,923	2,965	254,233
Henry county:														
Chicago, St Louis & Pittsburg	44.39	10,500	466,095				4.53	2,500	11,325	44.39	2,700	119,853	4,065	601,338
Howard county:														
Chicago, St. Louis & Pittsburg	13.72	10,500	144,060				6.01	2,500	15,025	13.72	2,700	37,044	1,820	197,949
Jackson county:														
Jeffersonville, Madison & Indianapolis	19.47	12,000	233,640				2.45	2,500	6,125	19.47	1,600	31,152	2,500	273,417
Jasper county:														
Chicago, St. Louis & Pittsburg	8.84	10,500	92,820				.46	2,500	1,150	8.84	2,700	23,868	300	118,138
Jay county:														
Chicago, St. Louis & Pittsburg	9.38	10,500	98,490				2.39	2,500	5,975	9.38	2,700	25,326	2,160	131,951
Jefferson county:														
Madison branch J., M. & I.	15.01	4,500	67,545				4.71	1,500	7,065	15.01	1,600	24,016	10,660	109,286
Jenning- county:														
Madison branch J., M. & I.	21.34	4,500	96,030				1.86	1,500	2,790	21.34	1,600	34,144	510	133,474
Johnson county:														
Jeffersonville, Madison & Indianapolis	21.70	12,000	260,400				3.63	2,500	9,075	21.70	1,600	34,720	5,500	309,695

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Lake county:														
Chicago, St. Louis & Pittsburg	22.13	$10,500	$232,365				3.29	$2,500	$8,225	22.13	$2,700	$59,751	$4,185	$304,526
La Porte county:														
Chicago, St. Louis & Pittsburg	6.86	10,500	72,030				.64	2,500	1,600	6.86	2,700	18,522	740	92,892
Madison county:														
Chicago, St. Louis & Pittsburg	22.39	10,500	235,095				5.50	2,500	13,750	22.39	2,700	60,453	2,725	312,023
Marion county:														
Chicago, St. Louis & Pittsburg	10.45	10,500	109,725				18.08	2,500	45,200	10.45	2,700	28,215	84,495	267,635
Jeffersonville, Madison & Indianapolis	8.99	12,000	107,880				5.01	2,500	12,525	8.99	1,600	14,384	350	135,139
Miami county:														
Chicago, St. Louis & Pittsburg	17.45	10,500	183,225				3.49	2,500	8,725	17.45	2,700	47,115	2,950	242,015
Newton county:														
Chicago, St. Louis & Pittsburg	13.54	10,500	142,170				2.46	2,500	6,150	13.54	2,700	36,558	3,525	188,403
Porter county:														
Chicago, St. Louis & Pittsburg	15.48	10,500	162,540				2.25	2,500	5,575	15.48	2,700	41,796	2,495	212,406
Pulaski county:														
Chicago, St. Louis & Pittsburg	21.21	10,500	222,705				2.71	2,500	6,775	21.21	2,700	57,267	1,840	288,587
Randolph county:														
Chicago, St. Louis & Pittsburg	15.87	10,500	166,635				2.99	2,500	7,475	15.87	2,700	42,849	2,060	219,019
Rush county:														
Chicago, St. Louis & Pittsburg	.44	10,500	4,620							.44	2,700	1,188		5,808
Cambridge branch J., M. & I	10.02	4,500	45,090				.90	1,500	1,350	10.02	1,600	16,032		62,472
Cambridge extension J., M. & I	10.48	4,500	47,160				.35	1,500	525	10.48	1,600	16,768	730	65,183
Scott county:														
Jeffersonville, Madison & Indianapolis	12.09	12,000	145,080				1.41	2,500	3,525	12.09	1,600	19,344	1,870	169,819
Shelby county:														
Cambridge branch J., M. & I	20.79	4,500	93,555				2.00	1,500	3,000	20.79	1,600	33,264	2,000	131,819
Starke county:														
Chicago, St. Louis & Pittsburg	8.51	10,500	89,355				1.47	2,500	3,675	8.51	2,700	22,977	1,605	117,612
Tipton county:														
Chicago, St. Louis & Pittsburg	11.56	10,500	121,380				1.15	2,500	2,875	11.56	2,700	31,212	300	155,767
Wayne county:														
Chicago, St. Louis & Pittsburg	39.88	10,500	418,740				9.86	2,500	24,650	39.88	2,700	107,676	28,115	579,181
Cincinnati & Richmond	7.96	8,000	63,680				.95	2,500	2,375	7.96	2,700	21,492	17,200	104,747
Cambridge extension J., M. & I	1.94	4,500	8,730				.80	1,500	1,200	1.94	1,600	3,104	1,500	14,534
White county:														
Chicago, St. Louis & Pittsburg	27.15	10,500	285,075				2.40	2,500	6,000	27.15	2,700	73,305	1,995	366,375

(From pages 110, 111.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1890, *as Valued and Equalized by the State Board of Equalization.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Chicago, St. Louis & Pittsburg	416.64	$10,500	$4,374,720	.....	.....	.....	93.93	$2,500	$234,825	416.64	$2,700	$1,124,928	$210,935	$5,945,408
Cincinnati & Richmond	7.96	8,000	63,680	.....	.....	.....	.95	2,500	2,375	7.96	2,700	21,492	17,200	104,747
Jeffersonville, Madison & Indianapolis	114.41	12,000	1,372,920	4.23	7,000	29,610	26.98	2,500	67,450	114.41	1,600	183,056		1,701,446
Madison branch J., M. & I	44.90	4,500	202,050	.....	.....	.....	9.59	1,500	14,385	44.90	1,600	71,840	48,410	288,275
Cambridge branch J., M. & I	42.19	4,500	189,855	.....	.....	.....	3.78	1,500	5,670	42.19	1,600	67,504		263,029
Cambridge extension J., M. & I	20.85	4,500	93,825	.....	.....	.....	1.54	1,500	2,310	20.85	1,600	33,360		129,495

187 (From pages 136 and 137.)

"Hon. Bruce Carr, auditor of state:

It is hereby certified that the foregoing record from page- 78 to 164, inclusive, is the true, full, and complete record of the proceedings of the State board of equalization for 1890, organized under the act entitled "An act concerning taxation," approved March 29, 1881, and that the same is a correct statement of the valuation made by said board for the year 1890.

ALVIN P. HOVEY,
Governor of Indiana and President of the State Board of Equalization.

JOHN W. COONS,
Deputy Auditor of State and Secretary of the State Board of Equalization.

OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *July* 25, 1890.

I, Bruce Carr, auditor of state of the State of Indiana, hereby certify that the within and foregoing is a true copy of the assessed value of the railroad property denominated 'railroad track,' 'rolling stock,' and 'improvements on right of way,' located, used, and operated in the State of Indiana, as fixed and valued by the State board of equalization for the year 1890 and as certified to me by the president and secretary of said board on July 25, 1890.

In witness whereof I have hereunto set my hand and seal, at Indianapolis, this 25th day of July, A. D. 1890.

BRUCE CARR,
[L. S.] *Auditor of State.*"

188 4. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in excluding the evidence of J. T. Brooks, offered by the plaintiff, to the effect that, considering the cost of the construction and equipment of the railroad properties in the State of Indiana which were consolidated into the plaintiff, the market value of the stocks and bonds and the gross and net earnings of said railroad corporations, and all other matters affecting their value, the true cash value of the property denominated "railroad track" and "rolling stock" by the statutes of Indiana, belonging to the corporations which were consolidated into the plaintiff corporation, in the various counties of Indiana through or — which the said railway lines extended on the first day of April, 1890, was as follows:

189	In Marion county	$402,774 00
	In Lake county	304,526 00
	In La Porte county	92,892 00
	In Porter county	212,406 00
	In Starke county	117,612 00
	In Pulaski county	288,587 00

In Cass county	753,126	00
In White county	366,375	00
In Jasper county	118,138	00
In Newton county	188,403	00
In Howard county	197,949	00
In Tipton county	155,767	00
In Hancock county	254,233	00
In Johnson county	309,695	00
In Bartholomew county	444,606	00
In Jackson county	273,417	00
In Scott county	169,819	00
In Clark county	540,337	00
In Floyd county	45,809	00
In Jefferson county	109,286	00
In Jennings county	133,774	00
In Shelby county	131,819	00
In Rush county	133,463	00
In Fayette county	52,308	00
In Wayne county	698,462	00
In Jay county	131,951	00
In Randolph county	219,019	00
190 In Henry county	601,338	00
In Madison county	312,023	00
In Miami county	242,015	00
In Grant county	351,147	00
In Blackford county	185,277	00

191 And that the true aggregate value of all the property in the State of Indiana denominated "railroad track" and "rolling stock" belonging to the consolidations which were consolidated into the plaintiff corporation on April first, 1890, was $8,538,053.

192 5. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in excluding the testimony of J. T. Brooks, offered by the plaintiff, to the effect that the average cash value per mile of the railroad track and rolling stock of the plaintiff, on the first day of April, 1891, in the State of Indiana, was thirteen thousand two hundred dollars ($13,200); in the State of Illinois seventy-six thousand nine hundred dollars ($76,900); in the State of Ohio twenty-four thousand two hundred dollars ($24,200); in the State of West Virginia twenty-two thousand seven hundred dollars ($22,700), and in the State of Pennsylvania fifty-four thousand seven hundred dollars ($54,700).

193 6. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in excluding the testimony of J. T. Brooks, offered by the plaintiff, to the effect that on the first day of April, 1891, the plaintiff owned very large and valuable equipment of rolling stock, to wit, of the value of seven hundred thousand dollars, used and operated wholly and solely in urban and suburban traffic

and transportation in and near to the city of Chicago and in and near to the cities of Allegheny and Pittsburgh, no part of which was ever used or operated on or over the lines of the railway of plaintiff in Indiana or upon or over any part of said lines, and that on said date the plaintiff also owned a very large and valuable equipment of rolling stock, to wit, of the value of one million five hundred thousand dollars, used and operated wholly and solely in the State of Ohio in the transportation of coal, ores, and minerals from and to points in the State of Ohio, and no part of which was ever used or operated upon or over the lines of railway of plaintiff in Indiana.

194 7. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in excluding the testimony of Alexander McElevey, offered by the plaintiff, to the effect that the percentage of the receipts of the plaintiff corporation for the fiscal year of the company next preceding the first day of April, 1891, from all traffic, transportation, and commerce on its lines in Indiana, originating and ending wholly within the State of Indiana, was thirty-four per cent. of the receipts from all traffic, transportation, and commerce on its lines in Indiana during said year, and that the receipts of the plaintiff corporation during said year from interstate traffic, transportation, and commerce on its lines in Indiana *was* sixty per cent. of the receipts of plaintiff corporation during said year from all traffic, transportation, and commerce on plaintiff's lines in Indiana.

195 8. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in excluding a copy of the annual return of the Terre Haute & Indianapolis Railroad Company for the year 1891, made to the auditor of state and duly certified by the auditor of state, which said copy was offered in evidence by the plaintiff.

196 9. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the portion of the official printed record of the proceedings of the State board of tax commissioners for the year 1891 containing the assessment of the Terre Haute and Indianapolis railroad for the year 1891, offered by the plaintiff.

10. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in admitting the testimony of Hon. Claude Matthews, a witness for the plaintiff, to the effect that in assessing the plaintiff's property in the year 1891 the State board of tax commissioners did not make any assessment except upon the railroad track and rolling stock of plaintiff situate within the State of Indiana.

11. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in admitting in evidence the testimony of Hon. Claude Matthews, a witness for the defendants, to the effect that in assessing the property of plaintiff within Indiana for the year

1891 the State board of tax commissioners did not assess any property of value outside of the State.

197 12. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of L. L. Gilbert, offered by the plaintiff, to the effect that the valuations of the "railroad track" and "rolling stock" upon which the amounts paid and tendered by the plaintiff to the defendants as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned were the valuations of the "railroad track" and "rolling stock" belonging to the plaintiff on April first, 1890, as made and fixed by the State board of equalization for 1890 and distributed by the proper officers to the respective counties and cities through or into which the lines of plaintiff extended and of which the defendants are respectively treasurers and tax collectors and as extended on the proper tax duplicates for 1890.

13. For error of law occurring at the trial and excepted to by the plaintiff, in this, to wit:

The court erred in refusing to admit in evidence the testimony of L. L. Gilbert, offered by the plaintiff, to the effect that the rates of tax levies upon which the amounts paid or tendered by the plaintiff to the defendants as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned were the rates of tax levies as made and fixed by the proper authorities of the respective counties, townships, and cities of which the defendants are respectively treasurers or tax collectors for the year 1891.

198 And the court, being fully advised in the premises, now overrules said motion for a new trial; to which ruling of the court in overruling said motion for a new trial the plaintiff now excepts and prays an appeal to the supreme court and for time within which to file its bill of exceptions herein and appeal bond, which appeal is now granted by the court and ten days' time given within which to file bill of exceptions and an appeal bond, conditioned in the sum of $1,000.00 and with sureties to be approved by the court.

199 And afterwards, to wit, on this 8th day of December, 1892, the same being the 28th judicial day of said November term of said court for said year 1892, before the honorable judge, the following proceedings were had herein, viz:

Comes now the plaintiff, by its attorneys, and tenders and submits to the court its bill of exceptions herein; which bill of exceptions is now within the time limited by the court signed and sealed by the court and made a part of the record in this cause; which bill of exceptions reads in the words and figures following, to wit:

200 In the Marion Circuit Court.

PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS *et al.* } No. 6215.

Bill of Exceptions.

Be it remembered that on the 1st day of December, 1892, being the 23d juridical day of the November, 1892, term of said court, the following pleas and proceedings were had in said cause before Hon. Edgar A. Brown, sole judge of said court, to wit:

Come now the parties, by their respective attorneys, and, by agreement, a jury is waived and the cause is submitted to the court for trial.

And thereupon, upon the trial of the cause, the parties agreed in open court that the following facts alleged in the complaint are true, to wit:

That the plaintiff is a corporation created by the consolidation of separate corporations organized under the statutes of the States of Pennsylvania, Ohio, Indiana, and Illinois, respectively; that plaintiff, as such corporation, owns and operates lines of railway extending from Pittsburgh, Pennsylvania, via Richmond, Indiana, to Indianapolis, Jeffersonville, and Madison, in said State of Indiana, and extending from said city of Pittsburgh, Pennsylvania, via Logansport, Indiana, to Chicago, Illinois, and also extending from Richmond, Indiana, via Kokomo and Logansport, to said city of Chicago.

201 That the lines of railway of plaintiff within the State of Indiana extended on April 1st, 1891, through or into the following-named counties, cities, and towns, to wit: The counties of Marion, Lake, La Porte, Porter, Starke, Pulaski, Cass, White, Jasper, Newton, Howard, Tipton, Hancock, Johnson, Bortholomew, Jackson, Scott, Clark, Floyd, Jefferson, Jennings, Shelby, Rush, Fayette, Wayne, Jay, Randolph, Henry, Madison, Miami, Grant, and Blackford, and the following cities and towns, to wit: Indianapolis, Southport, Royal Centre, Logansport, Walton, Burnettsville, Monticello, Walcott, Reynolds, Remington, Kokomo, Windfall, Elizabethtown, Franklin, Edinburgh, Columbus, Jonesville, Seymour, Jeffersonville, New Albany, Madison, Vernon, North Vernon, Shelbyville, Rushville, Richmond, Cambridge City, Dunkirk, Ridgeville, Union City, Anderson, Xenia, and Marion.

And that the plaintiff corporation owned on the first day of April, 1891, and still owns, as and for a right of way for said railway, a strip of land on each side of the center line of the main track of said railway as it extends into and through said named counties, cities, and towns, to wit, a strip of land twenty-five feet in width on each side of the said center line as it passes into and through said counties, cities, and towns.

And that the corporations of the State of Indiana which were consolidated in said consolidation were the Chicago, St. Louis and

Pittsburgh Railroad Company and the Jeffersonville, Madison and Indianapolis Railroad Company, including the Madison branch, the Cambridge branch, and the Cambridge extension of said Jeffersonville, Madison and Indianapolis Railroad Company, and the Cincinnati and Richmond Railroad Company.

And that said consolidation was effected between the first day of April, 1890, and the first day of April, 1891.

202 And that the defendants are respectively treasurers, tax collectors, and marshals of the respective counties, cities, and towns as alleged in the complaint herein.

203 The plaintiff then offered in evidence, to sustain the issues on its part, the following extracts from the printed official report of the State board of equalization for the year 1890 (it being agreed between the parties in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which relate to the assessment and valuation of the "railroad track" belonging to or controlled by the corporations which were consolidated into the plaintiff corporation on April 1st, 1890, and of the "rolling stock" belonging to or leased, hired, used, or operated by the corporations which were consolidated into the plaintiff corporation on April first, 1890):

204 (From pages 3, 4, and 5 of said report.)

Proceedings of the State Board of Equalization for the Year 1890.

STATE OF INDIANA, OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *June* 16, 1890.

In accordance with an act of the General Assembly of the State of Indiana entitled "An act concerning taxation," approved March 29, 1881, the board of equalization within and for the State of Indiana convened at the office of the auditor of state and organized as required by law.

The following members were present: Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin, who took and subscribed to the following oath:

We and each of us do solemnly swear that we will support the Constitution of the United States and the constitution of the State of Indiana, and that we will faithfully and impartially discharge our duties as members of the State board of equalization to the best of our ability.

IRA J. CHASE,
Lieutenant Governor.
BRUCE CARR,
Auditor of State.
J. A. LEMCKE,
Treasurer of State.
CHARLES F. GRIFFIN,
Secretary of State.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin,
205 members of the State board of equalization, who were sworn according to law and subscribed their names hereto.

In witness whereof I have hereunto set my hand and official seal this 16th day of June, 1890.

[L. S.]

WM. T. NOBLE,
Clerk Supreme Court.

And thereupon, on motion of Bruce Carr, Alvin P. Hovey was chosen as president and Ira J. Chase as president *pro tem.*, and John W. Coons, deputy auditor of state, was chosen secretary of the board and took and subscribed to the following oath:

I, John W. Coons, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of equalization to the best of my ability.

JOHN W. COONS.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named John W. Coons, who was sworn according to law and subscribed his name hereto.

Witness my hand and official seal this 16th day of June, 1890.

[L. S.]

WM. T. NOBLE,
Clerk Supreme Court.

206 "Upon motion of Bruce Carr, the secretary was instructed to notify the several railroad companies who desire to make statements in behalf of their respective companies that the board will hear such arguments from Monday, June 23, to June 30, inclusive, and that thereafter the board proceed to equalize and assess the railroads.

And thereupon the board adjourned.

IRA J. CHASE,
President pro Tem.

Attest: J. W. COONS, *Secretary.*"

"INDIANAPOLIS, *June* 24, 1890.

The board met pursuant to adjournment.

Present: Ira J. Chase, Bruce Carr, and J. A. Lemcke; and Governor Hovey now took and subscribed to the following oath:

I, Alvin P. Hovey, do solemnly swear that I will support the Constitution of the United States and the constitution of the State

of Indiana, and that I will faithfully and impartially discharge my duties as a member of the State board of equalization to the best of my ability.

ALVIN P. HOVEY.

STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, who was sworn according to law.

In witness whereof I have hereunto set my hand and seal this 24th day of June, 1890.

GEORGE U. BINGHAM,
Notary Public."

207 (From page 7 of said report.)

"INDIANAPOLIS, *June* 25, 1890.

The board met pursuant to adjournment.

Present: Alvin P. Hovey, Ira J. Chase, Bruce Carr, J. A. Lemcke, and Charles F. Griffin.

Col. H. B. Du Barry, representing the Pennsylvania system, made a lengthy statement in behalf of his several roads, showing to the board that the valuations of his road, in comparison with others, were excessive and should be reduced, etc., and thereupon the board adjourned until to-morrow morning at 10 o'clock.

ALVIN P. HOVEY,
President of Board.

Attest: JOHN W. COONS,
Secretary of Board."

208 From pages 12 and 13 of said report.

INDIANAPOLIS, *July* 11, 1890.

The board met pursuant to adjournment, all members present.

The board now resumed the valuations and assessments of the roads and continued the same during the entire day, and the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon, and the same was ordered to be spread upon record and to stand as the assessment of the railroad property denominated "railroad track, rolling stock, and improvements on right of way" for the year 1890; which assessment is in the words and figures following, to wit:

209 (From pages 14, 15, 16, and 20.)

Table No. 1.

"Value per mile of main track, second main and side track, rolling stock, and improvements on right of way and in daily use for railroad purposes as fixed by the State board of equalization for the purpose of taxation for the year 1890."

"Chicago, St. Louis & Pittsburgh:

416.64	miles	main track	per mile	$10,500
93.93	"	side track	"	2,500
416.64	"	rolling stock	"	2,700
Improvements on right of way				210,935"

Cincinnati & Richmond:

7.96	miles	main track	per mile	$8,000
.95	"	side track	"	2,500
7.96	"	rolling stock	"	2,700
Improvements on right of way				17,200

Jeffersonville, Madison & Indianapolis:

114.41	miles	main track	per mile	$12,000
4.23	"	second main	"	7,000
26.98	"	side track	"	2,500
114.41	"	rolling stock	"	1,600
Improvements on right of way, including branches				48,410

Madison branch J., M. & I.:

44.90	miles	main track	per mile	$4,500
9.95	miles	side track	"	1,500
44.90	"	rolling stock	"	1,600

Cambridge branch J., M. & I.:

42.19	miles	main track	per mile	$4,500
3.78	"	side track	"	1,500
42.19	"	rolling stock	"	1,600

Cambridge extension, J., M. & I.:

20.85	miles	main track	per mile	$4,500
1.54	"	side track	"	1,500
20.85	"	rolling stock	"	1,600

(From pages 113, 114, 115, 118, 119, 120, 121, 122, 124, 125, 126, 127, 128, 129, 130, 131, 132, 135.)

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Equalization*, 1890.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Bartholomew county:														
Jeffersonville, Madison & Indianapolis	22.18	$12,000	$266,160				2.79	$2,500	$6,975	22.18	$1,600	$35,488	$8,560	$317,183
Madison branch J., M. & I.	8.55	4,500	38,475				3.02	1,500	4,530	8.55	1,600	13,680		56,685
Cambridge branch J., M. & I.	11.38	4,500	51,210				.88	1,500	1,320	11.38	1,600	18,208		70,738
Blackford county:														
Chicago, St. Louis & Pittsburg	13.66	10,500	143,430				1.57	2,500	3,925	13.66	2,700	36,882	1,040	185,277
Cass county:														
Chicago, St. Louis & Pittsburg	49.63	10,500	521,115				16.02	2,500	40,050	49.63	2,700	134,001	57,960	753,126
Clarke county:														
Jeffersonville, Madison & Indianapolis	20.84	12,000	336,480	2.58	7,000	18,060	10.46	2,500	26,150	28.04	1,600	44,864	9,130	434,684
Fayette county:														
Cambridge extension J., M. & I.	8.43	4,500	37,935				.39	1,500	585	8.43	1,600	13,488	300	52,308
Floyd county:														
Jeffersonville, Madison & Indianapolis	1.94	12,000	23,280	1.65	7,000	11,550	1.23	2,500	3,075	1.94	1,600	3,104	4,800	45,809
Grant county:														
Chicago, St. Louis & Pittsburg	25.61	10,500	268,905				3.80	2,500	9,500	25.61	2,700	69,147	3,595	351,147
Hancock county:														
Chicago, St. Louis & Pittsburg	18.49	10,500	194,145				2.88	2,500	7,200	18.49	2,700	49,923	2,965	254,233
Henry county:														
Chicago, St Louis & Pittsburg	44.39	10,500	466,095				4.53	2,500	11,325	44.39	2,700	119,853	4,065	601,338
Howard county:														
Chicago, St. Louis & Pittsburg	13.72	10,500	144,060				6.01	2,500	15,025	13.72	2,700	37,044	1,820	197,949
Jackson county:														
Jeffersonville, Madison & Indianapolis	19.47	12,000	233,640				2.45	2,500	6,125	19.47	1,600	31,152	2,500	273,417
Jasper county:														
Chicago, St. Louis & Pittsburg	8.84	10,500	92,820				.46	2,500	1,150	8.84	2,700	23,868	300	118,138
Jay county:														
Chicago, St. Louis & Pittsburg	9.38	10,500	98,490				2.39	2,500	5,975	9.38	2,700	25,326	2,160	131,951
Jefferson county:														
Madison branch J., M. & I.	15.01	4,500	67,545				4.71	1,500	7,065	15.01	1,600	24,016	10,660	109,286
Jennings county:														
Madison branch J., M. & I.	21.34	4,500	96,030				1.86	1,500	2,790	21.34	1,600	34,144	510	133,474
Johnson county:														
Jeffersonville, Madison & Indianapolis	21.70	12,000	260,400				3.63	2,500	9,075	21.70	1,600	34,720	5,500	309,695

Table No. 4—Continued.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of roads.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Lake county:														
Chicago, St. Louis & Pittsburg	22.13	$10,500	$232,365				3.29	$2,500	$8,225	22.13	$2,700	$59,751	$4,185	$304,526
La Porte county:														
Chicago, St. Louis & Pittsburg	6.86	10,500	72,030				.64	2,500	1,600	6.86	2,700	18,522	740	92,892
Madison county:														
Chicago, St. Louis & Pittsburg	22.39	10,500	235,095				5.50	2,500	13,750	22.39	2,700	60,453	2,725	312,023
Marion county:														
Chicago, St. Louis & Pittsburg	10.45	10,500	109,725				18.08	2,500	45,200	10.45	2,700	28,215	84,495	267,635
Jeffersonville, Madison & Indianapolis	8.99	12,000	107,880				5.01	2,500	12,525	8.99	1,600	14,384	350	135,139
Miami county:														
Chicago, St. Louis & Pittsburg	17.45	10,500	183,225				3.49	2,500	8,725	17.45	2,700	47,115	2,950	242,015
Newton county:														
Chicago, St. Louis & Pittsburg	13.54	10,500	142,170				2.46	2,500	6,150	13.54	2,700	36,558	3,525	188,403
Porter county:														
Chicago, St. Louis & Pittsburg	15.48	10,500	162,540				2.25	2,500	5,575	15.48	2,700	41,796	2,495	212,406
Pulaski county:														
Chicago, St. Louis & Pittsburg	21.21	10,500	222,705				2.71	2,500	6,775	21.21	2,700	57,267	1,840	288,587
Randolph county:														
Chicago, St. Louis & Pittsburg	15.87	10,500	166,635				2.99	2,500	7,475	15.87	2,700	42,849	2,060	219,019
Rush county:														
Chicago, St. Louis & Pittsburg	.44	10,500	4,620							.44	2,700	1,188		5,808
Cambridge branch J., M. & I	10.02	4,500	45,090				.90	1,500	1,350	10.02	1,600	16,032		62,472
Cambridge extension J., M. & I	10.48	4,500	47,160				.35	1,500	525	10.48	1,600	16,768	730	65,183
Scott county:														
Jeffersonville, Madison & Indianapolis	12.09	12,000	145,080				1.41	2,500	3,525	12.09	1,600	19,344	1,870	169,819
Shelby county:														
Cambridge branch J., M. & I	20.79	4,500	93,555				2.00	1,500	3,000	20.79	1,600	33,264	2,000	131,819
Starke county:														
Chicago, St. Louis & Pittsburg	8.51	10,500	89,355				1.47	2,500	3,675	8.51	2,700	22,977	1,605	117,612
Tipton county:														
Chicago, St. Louis & Pittsburg	11.56	10,500	121,380				1.15	2,500	2,875	11.56	2,700	31,212	300	155,767
Wayne county:														
Chicago, St. Louis & Pittsburg	39.88	10,500	418,740				9.86	2,500	24,650	39.88	2,700	107,676	28,115	579,181
Cincinnati & Richmond	7.96	8,000	63,680				.95	2,500	2,375	7.96	2,700	21,492	17,200	104,747
Cambridge extension J., M. & I	1.94	4,500	8,730				.80	1,500	1,200	1.94	1,600	3,104	1,500	14,534
White county:														
Chicago, St. Louis & Pittsburg	27.15	10,500	285,075				2.40	2,500	6,000	27.15	2,700	73,305	1,995	366,375

(From pages 110, 111.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1890, *as Valued and Equalized by the State Board of Equalization.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Chicago, St. Louis & Pittsburg	416.64	$10,500	$4,374,720	.....	.....	.....	93.93	$2,500	$234,825	416.64	$2,700	$1,124,928	$210,935	$5,945,408
Cincinnati & Richmond	7.96	8,000	63,680	.....	.....	.....	.95	2,500	2,375	7.96	2,700	21,492	17,200	104,747
Jeffersonville, Madison & Indianapolis	114.41	12,000	1,372,920	4.23	7,000	29,610	26.98	2,500	67,450	114.41	1,600	183,056		1,701,446
Madison branch J., M. & I	44.90	4,500	202,050	.....	.....	.....	9.59	1,500	14,385	44.90	1,600	71,840	48,410	288,275
Cambridge branch J., M. & I	42.19	4,500	189,855	.....	.....	.....	3.78	1,500	5,670	42.19	1,600	67,504		263,029
Cambridge extension J., M. & I	20.85	4,500	93,825	.....	.....	.....	1.54	1,500	2,310	20.85	1,600	33,360		129,495

212 (From pages 136 and 137.)

Hon. Bruce Carr, auditor of state:

It is hereby certified that the foregoing record, from pages 78 to 164, inclusive, is the true, full, and complete record of the proceedings of the State board of equalization for 1890, organized under the act entitled "An act concerning taxation," approved March 29, 1881, and that the same is a correct statement of the valuation made by said board for the year 1890.

ALVIN P. HOVEY,
Governor of Indiana
and President of the State Board of Equalization.

JOHN W. COONS,
Deputy Auditor of State
and Secretary of the State Board of Equalization.

OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *July* 25, 1890.

I, Bruce Carr, auditor of state of the State of Indiana, hereby certify that the within and foregoing is a true copy of the assessed value of the railroad property denominated "railroad track," "rolling stock," and "improvements on right of way" located, used, and operated in the State of Indiana as fixed and valued by the State board of equalization for the year 1890 and as certified to me by the president and secretary of said board on July 25, 1890.

In witness whereof I hereunto set my hand and seal, at Indianapolis, this 25th day of July, A. D. 1890.

BRUCE CARR,
[L. S.] *Auditor of State.*

213 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

214 And thereupon the court sustained the objection of the defendants and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

215 And thereupon the plaintiff, by its counsel, introduced and put in evidence the following extracts from the printed official report of the proceedings of the State board of tax commissioners for the year 1891 (it being agreed between the parties in open court that said report is a true official report of the proceedings of said State board of tax commissioners for the year 1891; that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original official printed report, and that the following extracts are all the portions of said report which relate to the assessment and valuation of the "railroad track" belonging to or controlled by the plaintiff corporation on April first, 1891, and of the "rolling stock" belong-

ing to or leased, hired, used, or operated by the plaintiff corporation on April first 1891), to wit (pp. 3, 4, & 5):

Proceedings of the State Board of Tax Commissioners for the Year 1891.

STATE OF INDIANA, OFFICE OF AUDITOR OF STATE,
INDIANAPOLIS, *March* 21, 1891.

In accordance with an act of the General Assembly of the State of Indiana, entitled "An act concerning taxation," etc., approved March 6, 1891, the State board of tax commissioners within and for the State of Indiana convened at the office of the auditor of state and organized as required by law, the following members being present, to wit, Alvin P. Hovey, governor; Claude Matthews, secretary of state; Josiah Gwin and Ivan N. Walker, commissioners, who took and subscribed to the following oath:

216 We, Alvin P. Hovey, Claude Matthews, Josiah Gwin, and Ivan N. Walker, and each of us, do solemnly swear that we will support the Constitution of the United States and the constitution of the State of Indiana, and that we will faithfully and impartially discharge our duties as members of the State board of tax commissioners; that we will, according to our best knowledge and judgment, assess and equalize the property of the several counties of this State, and that we will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help us God.

ALVIN P. HOVEY, *Governor.*
CLAUDE MATTHEWS,
Secretary of State.
JOSIAH GWIN,
IVAN N. WALKER,
Commissioners.

217 STATE OF INDIANA, } ss:
Marion County, }

Before me, the undersigned, personally appeared the within-named Alvin P. Hovey, Claude Matthews, Josiah Gwin, and Ivan N. Walker, members of the State board of tax commissioners, who were sworn according to law, and subscribed their names thereto.

In witness whereof I have hereunto set my hand and official seal this 21st day of March, A. D. 1891.

[L. S.] ANDREW M. SWEENEY,
Cl'k Supreme Court.

And the board now organized with Alvin P. Hovey, governor, chairman, and Joseph T. Fanning, deputy auditor of state, was unanimously chosen secretary of the board and took and subscribed to the following oath:

I, Joseph T. Fanning, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana, and that I will faithfully perform my duties as secretary of the State board of tax commissioners to the best of my ability, so help me God. JOSEPH T. FANNING.

STATE OF INDIANA, } ss:
Marion County, }

218 Before me personally appeared the within-named Joseph T. Fanning, who was duly sworn according to law, and subscribed his name thereto.

In witness hereof I hereunto set my hand and official seal this 21st day of March, A. D. 1891.

[L. S.] ANDREW M. SWEENEY,
Clerk Supreme Court.

* * * * * * *

INDIANAPOLIS, IND.,
MONDAY, *August* 3, 1891—9 o'clock a. m.

The State board of tax commissioners of the State of Indiana met in the office of the auditor of state at 9 o'clock a. m. on the 3rd day of August, 1891, being the first Monday of said month, in accordance with section 129 of the tax law approved March 6, 1891.

Present: Alvin P. Hovey, governor, chairman of the board; Claude Matthews, secretary of state; J. O. Henderson, auditor of state; I. N. Walker and Josiah Gwin, commissioners, and Joseph T. Fanning, deputy auditor of state and secretary of board.

Hon. J. O. Henderson, auditor of state, now took and subscribed to the following oath:

STATE OF INDIANA, } ss:
Marion County, }

I, J. O. Henderson, do solemnly swear that I will support the Constitution of the United States and the constitution of the State of Indiana; that I will faithfully and impartially discharge my duties as a member of the State board of tax commissioners; that I will, according to my best knowledge and judgment, assess and equalize the property of the several counties of this State, and
219 that I will in no case assess any property at more or less than its true cash value, as the same is defined in section 53 of the act concerning taxation, so help me God.

J. O. HENDERSON.

Subscribed and sworn to this 3rd day of August, 1891.

GEORGE U. BINGHAM,
Notary Public.

On motion of Mr. Walker, the following order of business was adopted for the consideration of the business before the board:

1st. The consideration of appeals from county boards of review.

2nd. The equalization of the assessments of realty as returned by the counties.

3d. The assessment of railroad property and corporations.

On motion of Mr. Walker, the secretary of the board was directed to notify railroad corporations and companies that they would be required to put in writing their statements regarding the assessment of their property, and that only brief oral statements could be heard.

On motion of Mr. Henderson, the secretary was directed to notify

the railroad companies and corporations that they will be heard on a certain date, and that the secretary designate the number to be heard each day.

On motion of Mr. Walker, it was agreed to begin the hearing of railroad companies and corporations on Thursday, August 20, 1891, at 9 o'clock a. m.

On motion of Mr. Walker, the board then adjourned until next Monday morning, August 10, 1891, at 10 o'clock.

ALVIN P. HOVEY,
Chairman of the Board.

Attest: JOS. T. FANNING,
Secretary of the Board.

220 (From page 36.)

"TUESDAY, *August* 25, 1891—10 o'clock a. m.

H. B. Du Barry, representing the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, appeared and made a statement for that system of railroads. He was followed by J. T. Brooks, second vice-president and general manager of said company, who gave his views as to the proper method of assessing railroads. He also spoke in behalf of the Pittsburgh, Ft. Wayne & Chicago railroad."

221 (From pages 77 and 80.)

"INDIANAPOLIS, IND., TUESDAY, *September* 8, 1891—10 a. m.

"The State board of tax commissioners met pursuant to adjournment.

* * * * * * *

"The State board of tax commissioners having had under consideration the assessment of the several railroads in the State, the following valuation per mile of the various roads within this State and the improvements on the right of way and in daily use by such railroads was unanimously agreed upon and the same was ordered to be spread upon the record and to stand as the assessment of the railroad property denominated railroad track, rolling stock, and improvements on right of way for the year 1891; which assessment is in the words and figures, to wit:

222 (From pages 81 and 89.)

"*Table No.* 1.

Value per mile of main tracks, second main and side tracks, rolling stock, and improvements of right of way and in daily use for railroad purposes as fixed by the State board of tax commissioners for the purpose of taxation for the year 1891.

Pittsburgh, Cincinnati, Chicago & St. Louis:

647.42	miles	main track	per mile	$28,500
4.23	"	second main	" "	8,000
143.84	"	side track	" "	4,500
647.42	"	rolling stock	" "	5,000
Improvements on right of way				286,780"

TABLE No. 4.—*Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners*, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Bartholomew county:														
Pittsburg, Cincinnati, Chicago & St. Louis	42.11	$28,500	$1,200,135				6.90	$4,500	$31,050	42.11	$5,000	$210,550	$8,410	$1,450,145
Blackford county:														
Pittsburg, Cincinnati, Chicago & St. Louis	13.66	28,500	389,310				1.57	4,500	7,065	13.66	5,000	68,300	970	465,645
Cass county:														
Pittsburg, Cincinnati, Chicago & St. Louis	49.63	28,500	1,414,455				16.14	4,500	72,630	49.63	5,000	248,150	64,075	1,799,310
Clarke county:														
Pittsburg, Cincinnati, Chicago & St. Louis	28.04	28,500	799,140	2.58	8,000	20,600	10.81	4,500	48,645	20.84	5,000	140,200	6,745	1,015,370
Fayette county:														
Pittsburg, Cincinnati, Chicago & St. Louis	8.43	28,500	240,255				.30	4,500	1,755	8.43	5,000	42,150	300	284,460
Floyd county:														
Pittsburg, Cincinnati, Chicago & St. Louis	1.94	28,500	55,290	1.65	8,000	13,200	1.20	4,500	5,400	1.94	5,000	9,700	5,760	89,350
Grant county:														
Pittsburg, Cincinnati, Chicago & St. Louis	25.61	28,500	729,885				6.34	4,500	28,530	25.61	5,000	128,050	3,175	889,640
Hancock county:														
Pittsburg, Cincinnati, Chicago & St. Louis	18.49	28,500	526,695				3.16	4,500	14,220	18.49	5,000	92,450	2,815	636,450
Henry county:														
Pittsburg, Cincinnati, Chicago & St. Louis	44.39	28,500	1,265,115				5.25	4,500	23,623	44.39	5,000	221,950	4,405	1,515,095
Howard county:														
Pittsburg, Cincinnati, Chicago & St. Louis	13.72	28,500	391,020				6.44	4,500	28,980	13.72	5,000	68,600	1,760	490,360
Jackson county:														
Pittsburg, Cincinnati, Chicago & St. Louis	19.47	28,500	554,895				2.58	4,500	11,610	19.47	5,000	97,350	2,470	666,325
Jasper county:														
Pittsburg, Cincinnati, Chicago & St. Louis	8.44	28,500	251,940				1.59	4,500	7,155	8.84	5,000	44,200	240	303,535
Jay county:														
Pittsburg, Cincinnati, Chicago & St. Louis	9.38	28,500	267,330				2.46	4,500	11,070	9.38	5,000	46,900	1,985	327,285
Jefferson county:														
Pittsburg, Cincinnati, Chicago & St. Louis	15.01	28,500	427,785				4.69	4,500	21,105	15.01	5,000	75,050	9,465	533,405
Jennings county:														
Pittsburg, Cincinnati, Chicago & St. Louis	21.34	28,500	608,190				1.74	4,500	7,830	21.34	5,000	106,700	285	723,005
Johnson county:														
Pittsburg, Cincinnati, Chicago & St. Louis	21.70	28,500	618,450				2.90	4,500	13,050	21.70	5,000	108,500	7,035	747,035
Lake county:														
Pittsburg, Cincinnati, Chicago & St. Louis	22.13	28,500	630,705				3.29	4,500	14,805	22.13	5,000	110,650	3,810	759,970
La Porte county:														
Pittsburg, Cincinnati, Chicago & St. Louis	6.86	28,500	195,510				.64	4,500	2,880	6.86	5,000	34,300	640	233,330

Madison county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	22.39	28,500	638,115	.....	.....	.....	7.47	4,500	33,615	22.39	5,000	111,950	2,-45	786,125
Marion county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	19.44	28,500	554,040	.....	.....	.....	22.81	4,500	102,615	19.44	5,000	97,200	109,385	863,270
Miami county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	17.45	28,500	497,325	.....	.....	.....	3.61	4,500	16,245	17.45	5,000	87,250	2,815	603,635
Newton county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	13.54	28,500	385,890	.....	.....	.....	2.46	4,500	11,070	13.54	5,000	67,700	2,710	467,370
Porter county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	15.48	28,500	441,180	.....	.....	.....	2.23	4,500	10,035	15.48	5,000	77,400	2,145	530,760
Pulaski county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	21.21	28,500	604,485	.....	.....	.....	2.88	4,500	12,960	21.21	5,000	106,050	1,760	725,255
Randolph county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	15.87	28,500	452,295	.....	.....	.....	2.99	4,500	13,455	15.87	5,000	79,350	1,910	547,010
Rush county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	20.94	28,500	596,790	.....	.....	.....	1.47	4,500	6,615	20.94	5,000	104,700	530	708,635
Scott county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	12.09	28,500	344,565	.....	.....	.....	1.48	4,500	6,660	12.09	5,000	60,450	1,870	413,545
Shelby county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	20.79	28,500	592,515	.....	.....	.....	1.96	4,500	8,820	20.79	5,000	103,950	2,000	707,285
Starke county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	8.51	28,500	242,535	.....	.....	.....	1.92	4,500	8,640	8.51	5,000	42,550	1,600	295,325
Tipton county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	11.56	28,500	329,460	.....	.....	.....	1.03	4,500	4,635	11.56	5,000	57,800	190	392,085
Wayne county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	50.25	28,500	1,432,125	.....	.....	.....	11.04	4,500	49,680	50 25	5,000	251,250	41,225	1,774,280
White county:														
Pittsburg, Cincinnati, Chicago & St. Louis.....	27.15	28,500	773,775	.....	.....	.....	2.40	4,500	10,800	27.15	5,000	135,750	1,850	922,175

(From pages 184, 186.)

TABLE No. 3.—*Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year* 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Average value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile	Total.	Miles.	Per mile.	Total.			
Pittsburg, Cincinnati, Chicago & St. Louis	647.42	$28,500	$18,451,470	4.23	$8,000	$33,84-	143.84	$4,500	$647,280	647.42	$5,000	$3,237,100	$296,780	$22,666,470	$35,014

224 (From page 213.)

"Making liberal allowances for all proper deductions, the State board of tax commissioners has fixed the values of the respective railroads and parts of roads within the State of Indiana for taxation on the first day of April, 1891, as hereinbefore set forth.

In arriving at the basis for the estimate of said values the board has considered the cost of the construction and equipment of said roads, the market value of the stocks and bonds and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same."

225 (From page 221 of said report.)

"Hon. J. O. Henderson, auditor of state:

It is hereby certified that the foregoing record from page 116 to page 312, inclusive, is the true, full, and complete record of the proceedings of the State board of tax commissioners, organized under the act entitled 'An act concerning taxation, repealing all laws in conflict therewith, and declaring an emergency,' approved March 6, 1891, and that the same is a correct statement of the rates finally determined by said board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board and the valuations made by said board for the year 1891.

ALVIN P. HOVEY,
Governor of Indiana and Chairman of the State Board of Tax Commissioners.

JOSEPH T. FANNING,
Deputy Auditor of State and Secretary of the State Board of Tax Commissioners."

226 (From page 222 of said report.)

"STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of the State of Indiana, do hereby certify that the foregoing is a true copy of the record of the proceedings of the State board of tax commissioners, and that the same contains a true copy of the actions of said board in fixing the assessments of the several corporations, firms, and individuals therein mentioned, and the orders of said board concerning appeals taken from the orders of the several boards of review of the several counties of the State, and of the equalization of the assessments of the real property in the several counties of this State, and of the valuations and assessments of the railroad property denominated 'railroad track,' 'rolling stock,' and 'improvements on rights of way'

located, used, and operated in the State of Indiana, as fixed and valued by the State board of tax commissioners for the year 1891 and as certified to me by the chairman and secretary of said board on the 11th day of September, 1891.

In witness whereof I have hereunto set my hand and
[SEAL.] affixed my official seal, at the city of Indianapolis, this 11th day of September, 1891.

J. O. HENDERSON,
Auditor of State."

227 And thereupon the plaintiff, by its counsel, introduced and put in evidence a copy of the return of the plaintiff corporation for the year 1891, made to the auditor of state and duly certified by the auditor of state, said return being in the words and figures following, to wit:

228 Auditor's

(This blank to be filed with auditor

Annual Return of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by of April, 1891, as required of railroad com

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Bartholomew (main line)	187	69	8,103	8,410	22	18	210,845
Bartholomew, Cambridge br.	124	83	2,147		11	38	42,058
Bartholomew, Madison br.	96	49	7,836		8	55	31,585
Blackford	142	69	5,787	970	13	66	129,868
Cass	492	54	22,586	52,945	49	63	367,321
Clarke	180	15	14,820	5,745	28	04	266,481
Fayette, Cambridge br.	102	14	2,243	300	8	43	31,146
Floyd	4	74	22,235	4,760	1	94	18,424
Grant	261	94	13,082	3,175	25	61	243,391
Hancock	130	86	5,630	2,815	18	49	195,224
Henry	294	51	13,238	4,055	44	39	341,733
Howard	133	09	4,809	1,760	13	72	72,461
Jackson	141	62	3,235	2,470	19	47	185,072
Jasper	107	09	1,392	240	8	84	41,983
Jay	98	10	4,878	1,985	9	38	89,156
Jefferson, Mad. br.	176	95	7,597	9,465	15	01	55,479
Jennings	258	88	4,580	285	21	34	78,869
Johnson	262	80	8,735	5,435	21	70	206,251
Lake	143	35	2,517	3,810	22	13	210,291
La Porte	41	60	408	640	6	86	65,236
Madison	161	45	6,923	2,445	22	39	118,213
Marion	174	69	143,003	84,885	19	44	195,792
Miami	180	37	8,257	2,815	17	45	165,841
Newton	166	61	2,465	2,710	13	54	64,350
Porter	187	64	4,222	2,145	15	48	147,132
Pulaski	135	84	3,041	1,760	21	21	201,560
Randolph	151	40	7,102	1,910	15	87	150,862
Rush	3	17	146		0	44	4,600
" Cambridge br.	200	82	5,873	530	20	50	75,758
Scott	8.7	90	2,268	1,870	12	09	114,870
Shelby, Cambridge br.	16.4	72	4,496	2,000	20	79	76,838
Starke	55	34	746	1,600	8	51	80,856
Tipton	73	77	1,576	190	11	56	61,048
Wayne	295	17	39,069	40,225	48	31	371,850
" Cambridge br.	20	48	1,300	1,000	1	94	7,177
White	327	60	4,073	1,850	27	15	129,033
Totals in State	5,769	03	390,418	257,200	647	42	4,848,654

form.

of state between April 1 and June 1.)

Company to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company on the 1st day
panies, according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
			2	95	7,822	22	18	71,250	306,430
			0	93	1,472	11	38	36,557	82,234
			3	02	4,743	8	55	27,466	71,630
			1	57	4,152	13	66	43,881	184,658
			16	14	41,396	49	63	159,429	643,677
2	58	13,607	10	81	28,551	28	04	90,074	419,278
			0	39	623	8	43	27,080	61,392
1	65	8,732	1	20	3,180	1	94	6,232	63,563
			6	34	16,742	25	61	82,268	358,658
			3	16	8,333	18	49	29,396	271,398
			5	25	12,504	44	39	142,596	514,126
			6	44	13,604	13	72	44,073	136,707
			2	58	6,807	19	47	62,544	260,128
			1	59	3,367	8	84	28,397	75,379
			2	46	6,499	9	38	30,132	132,650
			4	69	7,430	15	01	48,217	128,188
			1	74	2,744	21	34	68,551	155,029
			2	90	7,673	21	70	69,708	297,802
			3	29	8,704	22	13	71,089	296,411
			0	64	1,702	6	86	22,037	90,023
			7	47	15,777	22	39	71,925	215,283
			22	81	60,202	19	44	62,448	546,330
			3	61	9,524	17	45	56.065	242,502
			2	46	5,198	13	54	43,495	118,218
			2	23	5,889	15	48	49,727	209,115
			2	88	7,608	21	21	68,134	282,103
			2	99	7,904	15	87	50,980	218,758
						0	44	1,413	6,159
			1	47	2,327	20	50	65,853	150,341
			1	48	3,892	12	09	38,837	161,737
			1	96	3,120	20	79	66,785	153,239
			1	92	5,058	8	51	27,337	115,597
			1	03	2,181	11	56	37,135	102,130
			10	24	25,668	48	31	155,188	632,000
			0	80	1,258	1	94	6,232	16,367
			2	40	5,031	27	15	87,205	227,192
4	23	22,339	143	84	348,685	647	42	2,079,736	7,947,032

229 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased in whole or in part, by the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	249	4,156 62	1,035,000
Locomotives, second class		140	1,050 85	147,120
Passenger cars, first class		89	2,400 00	213,600
Passenger cars, second class		92	1,213 04	111,600
Pay cars		2	1,500 00	3,000
Officers' cars				
Sleeping cars				
Dining and drawing room cars				
Postal cars		13	1,984 62	25,800
Combination cars				
Baggage, mail, or express cars		85	797 65	67,800
Box cars		6858	210 00	1,440,180
Stock cars		1662	195 00	324,090
Coal cars		623	165 00	102,795
Platform cars		764	150 00	114,600
Wrecking and camp cars		16	210 00	3,360
Ice and refrigerator cars				
Fast-freight-line cars				
Caboose cars		265	240 00	63,600
Steam shovels		4	1,500 00	6,000
Pile-driving cars		1	1,500 00	1,500
Push-cars		272	10 00	2,720
Hand cars		307	15 00	4,605
Telegraph camp cars		2	1,500 00	3,000
Grain-transfer cars		2	1,500 00	3,000
Derrick cars		9	840 00	7,560
Total listed value of rolling stock				3,680,930

Length of main track on which said rolling stock is used in Indiana	647 miles, 42 hund.
Length of main track on which said rolling stock is used elsewhere (describe such roads below)	498 miles, 45 hund.
Total length of road	1,145 miles, 87 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used:

Pittsburgh, Cincinnati, Chicago and St. Louis railway	438 miles, 84 hund.
Pittsburgh, Wheeling and Kentucky railroad, leased	28 miles, 04 hund.
Chartiers railway, leased	23 miles, 48 hund.
Louisville Bridge Co., operated	2 miles, 47 hund.
Englewood Connecting railway, operated	2 miles, 35 hund.
Ohio Connecting railway, "	3 miles, 37 hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Pullman Palace Car Co.

Give name of express company doing business over your line. Adams Express Co.

Give names of fast-freight companies owning their own cars doing business over your line. Union line and Erie Despatch.

Give name and address of president of your company. George B. Roberts, Philadelphia, Pa.

Give name and address of secretary of your company. S. B. Liggett, Pittsburgh, Pa.

Give name and address of gen'l manager of your company. Joseph Wood, Pittsburgh, Pa.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. H. B. Du Barry, ass't engineer, Pittsburgh, Pa.

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SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company on the 1st day of April, 1891, and hereby scheduled and returned as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 2,800.
State length of time road has been built. 25 to 50 years.
State number miles of track laid with steel rail. 568.60.
State number miles of track laid with iron rail. 83.05.
State number miles of siding laid with steel rail. ——.
State number miles of siding laid with iron rail. ——.
State weight of iron and steel rail used in main track and sidings. 60 to 75 lbs.
State kind of "joints" or "chairs" used. Splice-bars.
State proportion of ballast used on road: Rock, ——; gravel, ——; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company on the 1st day of April, 1891, as required of railroad companies, according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$75,000,000 00
Number of shares	750,000 00
Amount of capital stock paid up	43,820,650 24
Market value of stock per share	Common, 15 Preferred, 51½
Actual value of stock per share	Common, 15 Preferred, 51½

Indebtedness.

Amount of 1st cons'd mortgage bonds	$6,818,000 00
Amount of 2d-mortgage bonds	
Amount of sectional mortgage bonds	35,126,500 00
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	44,313,432 49
Current expense for operating road	1,340,808 83
Total listed valuation of all tangible property in this State	8,255,571 00

Earnings.

Gross earnings of entire road, as shown by last official report of company	$15,452,932 98
Net earnings of entire road, as shown by last official report of company	3,991,889 88
Gross earnings of miles of road within this State, as shown by last official report	9,494,654 20
Net earnings of miles of road within this State, as shown by last official report	2,452,712 65
Average annual net earnings per mile over entire line, as shown by last official report	3,487 98
Average annual gross earnings per mile over entire line, as shown by last official report	32,502 20

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

231 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water
Railway Company, Situated upon the "Right of

County.	Township.	Descri Name of station.
☞(Arrange counties in alphabetical order.)		
Bartholomew	Wayne	Jonesville
	Columbus	Columbus
	German	Taylorsville
Blackford	Jackson	Mill Grove
	Licking	W. of Hartford City
		Hartford City
Cass	Eel	Logansport

No. 5.

Tanks, Other Buildings, Belonging to the Pittsburgh, Cincinnati, Chicago and St. Louis Way" of said Road in all Counties, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Station-house	16 x 40	Frame	2	400
Passenger "	27 x 86	Brick	12	2,000
Freight "	36 x 166	"	7	4,000
Carpenter shops	70 x 85	Frame	21	300
Supervisor's office	17 x 38	"	16	100
2 tool-houses		"		60
Water tank	16 x 24	"	4	800
Car inspector's house	15 x 24	"	7	200
Telegraph-supply "	14 x 26	"	4	100
5 watch-houses	5 x 5	"		100
Yard master's office		"	2	50
Station-house	20 x 100	"	30	300
Total Bartholomew county				**8,410**
Station-house	12 x 16	"	7	45
Coal "	8 x 10		6	15
Water tank	14 x 20		11	350
Pump house	14 x 18		11	50
Coal "	10 x 14		7	20
Station-house	18 x 20		23	400
Tool "	12 x 16		5	45
" "	12 x 16		6	45
Total Blackford county				**970**
3 tool-houses	12 x 16	Frame		140
Engine-house	38 stalls	Brick	27	12,000
Oil "	22 x 60	Stone	7	1,500
Tallow "	12 x 16	Frame	4	20
Sand "	20 x 36	"	13	10
8 coal-houses & bins		"		115
5 wash "		"		150
Water tank	16 x 23	"	16	100
Nat. gas house	10 x 10	Brick	1	80
Storehouse	20 x 114	Frame	27	25
Foreman's office	26 x 30	"	2	700
Casting shed	14 x 64	"	15	30
Boiler store-room	18 x 62	"	9	60
Iron shed	16 x 18	"	9	25
Boiler shops	61 x 108	Stone	9	2,500
Machine "	60 x 154 58 x 100	"	27	5,000
Engine-room	20 x 40	Brick	21	50
Steel rack	15 x 17	Frame	Old	10
Smith shops	50 x 150	Stone	21	2,500
Charcoal-house	20 x 27	Frame	14	15
Car shops	73 x 173	Stone	20	2,500
" "	50 x 173 43 x 82	"	20	2,500
Engine-room	16 x 30	"	27	30
Car-repair house	18 x 60	Frame	4	60

Schedule No.

	County.	Township.	Descri Name of station.
232	Cass	Eel	Logansport
		Noble	Gibhardt
		Boone	Royal Centre
		Jefferson	Lake Cicott
		Washington	Anoka
		Tipton	Onward
		Jackson	Walton Galveston
	Clarke	Jeffersonville	Jeffersonville Jct. Ohio Falls Jeffersonville
		Silver Creek	Sellersburg

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Oil-room	12 x 16	Frame	4	20
Tower-house	12 x 12	"	2	435
Carpenter "	20 x 40	"	5	30
Scraps bin	18 x 60	"	4	20
Store-room	12 x 36	"	3	60
Yard master's office	15 x 24	"	8	400
Cass county carried forward				31,085
				9,380
Brought forward				**9,380**
" "				31,085
Ice-house	50 x 100	Frame	4	800
"	14 x 24	"	5	95
Car insp. room	12 x 16	"	6	55
Freight-house	36 x 183	Brick	4	4,500
Master carpenter's office	14 x 42	Frame	9	150
Passenger-house	38 x 105	Brick	3	12,000
Telegraph office	12 x 16	Frame	11	50
Station-house	12 x 16	"	8	40
Tool-house	12 x 16	"	9	40
Station "	16 x 40	"	8	500
Tool "	12 x 16	"	9	20
Coal "	8 x 10	"	7	25
Pump "	14 x 18	"	9	35
Water tank	16 x 20	"	9	450
Station-house	14 x 22	"	13	20
Water tank	14 x 20	"	18	90
Pump-house	12 x 16	"	3	50
Coal "	10 x 14	"	3	20
Ice "	100 x 100	"	3	1,500
Tool "	12 x 16	"	8	45
Water tank	16 x 20	"	9	450
Pump-house	12 x 18	"	9	55
Coal "	10 x 13	"	9	15
Station "	14 x 32	"	2	100
Station "	12 x 16	"	7	50
Coal "	8 x 10	"	Old	5
Tool "	12 x 16	"	3	50
Station "	16 x 40	"	5	400
" "	18 x 84	"	27	240
Coal "	12 x 16	"	9	10
Total Cass county				**52,945**
Signal tower	14 x 14	Frame	4	500
" "	14 x 14	"	8	400
Passenger-house	21 x 73	"	4	800
Signal tower	14 x 14	"	8	400
Freight-house	60 x 400	Brick	27	2,000
Repair shed	50 x 150	Frame	24	75
Oil-house	18 x 22	Brick	39	50
3 watch-houses	5 x 5	Frame		60
Water tank	16 x 20	"	1	500
Station-house	15 x 30	"	28	200

Schedule No.

County.	Township.	Descri Name of station.
		Speed
	Monroe	Henryville
Fayette	Fairview	Falmouth
	Posey	Bentonville
233 Floyd	New Albany	New Albany
Grant	Jefferson	Upland
	Mill	Jonesboro'
	Centre	Marion
	Pleasant	Sweetser
	Richland	Mier
Hancock	Jackson	Charlottesville
	Centre	Greenfield
	Sugar Creek	Philadelphia
Henry	Dudley	Straugher

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Tool-house	14 x 16	Frame	2	100
Water tank and pump-house		"	9	500
Station-house	16 x 60	"	39	150
Tool "	8 x 12	"	25	10
Total Clarke county				**5,745**
Station-house	25 x 35	Frame	23	150
" "	24 x 36	"	19	150
Total Fayette county				**300**
Amount forward				**68,370**
Brought forward				**68,370**
Passenger-house	20 x 56	Brick	5	2,500
Freight "	37 x 101	"	5	1,500
Passenger-h., 5th St.	12 x 15	Frame	4	200
9th St.	" x "	"	4	200
16th St.	" x "	"	4	200
Telegraph office	5 x 5	"	6	20
5 watch-houses	5 x 5	"	5	140
Total Floyd county				**4,760**
Station-house	16 x 40	Frame	4	450
Tool "	12 x 16	"	3	50
Station "	18 x 52	"	11	550
Tool "	12 x 18	"	4	45
Station "	25 x 100	"	12	800
Water tank	16 x 20	"	5	500
Storehouse	20 x 60	"	21	50
Tool-house	12 x 16	"	8	45
" "	" x "	"	2	50
Coal bin	8 x 45	"	10	15
2 watch-houses	6 x 6	"	8	70
Station-house	16 x 40	"	3	500
Tool "	12 x 16	"	5	40
Coal "	8 x 12	"	3	10
Total Grant county				**3,175**
Station-house	20 x 40	Frame	10	450
Tool "	12 x 16	"	10	25
Passenger-house	24 x 40	"	10	800
Freight "	22 x 40	"	3	400
Tool "	12 x 16	"	8	25
Station	20 x 40	"	9	450
Tool	10 x 14	"	14	15
Water tank	15 x 20	"	12	400
Pump-house	16 x 24	"	9	50
Foreman's house		"	6	200
Total Hancock county				**2,815**
Station-house	20 x 50	Frame	10	450
Tool "	12 x 16	"	10	25

Schedule No.

	County.	Township.	Descri Name of station.
		Franklin	Lewisville
		Spiceland	Dunreith
		Wayne	Knightstown
		Henry	New Castle
		Jefferson	Sulphur Springs
234	Howard	Centre	Kokomo
	Jackson	Vernon	Crathersville
		Washington	Chestnut Ridge
		Jackson	Seymour
		Redding	Rockford
	Jasper	Carpenter	Remington
	Jay	Jefferson	Powers
		Richland	Red Key

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Coal-house	8 x 8	Frame	11	5
Tool "	12 x 16	"	9	25
" "	12 x 16	"	8	25
Passenger-house	25 x 50	"	9	800
Freight "	24 x 40	"	9	250
Water tank	16 x 23	"	10	400
Pump-house	16 x 24	"	10	75
Tool "	12 x 16	"	14	15
Coal "	12 x 14	"	9	20
Watch "	6 x 6	"	3	25
½ passenger-house	40 x 60	Brick	22	700
½ transfer "	16 x 16	Frame	1	50
Freight "	30 x 60	"	22	150
Tool "	12 x 16	"	10	20
Watch "	6 x 6	"	5	30
Station "	18 x 44	"	8	400
Water tank	16 x 20	"	10	500
Pump-house	14 x 18	"	10	50
Coal "	12 x 16	"	8	20
Tool "	12 x 16	"	10	20
Total Henry county				**4,055**
Amount forward				**83,175**
Brought forward				**83,175**
Station-house	33 x 78	Frame	12	1,500
2 tool-houses	12 x 14	"	18	10
Pump "	14 x 18	"	11	40
Water tank	16 x 20	"	11	150
5 watch-houses	6 x 6	"	4	60
Total Howard county				**1,700**
Station-house	25 x 100	Frame	29	600
Tool "	14 x 16	"	5	50
" "	12 x 18	"		10
Station "	11 x 73	"	4	1,000
Tool "	14 x 16	"	2	100
3 watch-houses	5 x 6	"		60
Station-house	20 x 40	"	26	150
Water tank	10 x 20	"	8	450
Pump-house	6 x 10	"	8	50
Total Jackson county				**2,470**
Station-house	20 x 80	Frame	21	150
2 tool-houses	12 x 16	"	2	90
Total Jasper county				**240**
Tool-house	10 x 12	Frame	1	45
Coal "	10 x 12	"	4	20
Water tank	10 x 20	"	6	500
Pump-house	14 x 18	"	7	60
Coal "	10 x 14	"	7	20

Schedule No.

County.	Township.	Descri Name of station.
		Dunkirk
Jefferson	Madison	Madison
		North Madison
		Wirt
	Lancaster	Dupont
Jennings	Vernon	Gray Ford
		Centre
		Geneva
235 Johnson	Blue River	Edinburgh
	Franklin	Franklin
	Pleasant	Whitland
		Greenwood
Lake	Winfield	Le Roy
	Centre	Crown Point

5—Continued.

ption of all kinds of buildings on "right of way."				True cash value.
For what use.	Dimensions.	Kind.	Age.	
Tool-house	12 x 16	Frame	6	45
Station "	16 x 49	"	4	450
Tool "	12 x 16	"	5	45
Station "	18 x 46	"	2	800
Total Jay county				**1,985**
Passenger-house	27 x 270	Brick	39	1,000
Freight	60 x 340	"	42	4,000
Station	14 x 40	Frame	25	200
Engine	140 dia.	Brick	40	1,800
Machine shop	45 x 140	"	37	800
Smith	35 x 66	"	30	500
Store-room	20 x 50	"	29	500
Water tank		Frame	Old	50
Station-house	12 x 22	"	1	80
" "	16 x 42	"	26	25
Tool "	10 x 12	"	Old	10
Water tank	16 x 20	"	1	500
Total Jefferson county				**9,465**
Water tank		Frame	Old	25
Station-house	29 x 89	"	42	150
" "	8 x 30	"	Old	10
Water tank		"	7	100
Total Jennings county				**285**
Amount forward				**99,380**
Brought forward				**99,380**
Station-house	40 x 150	Brick	29	2,000
Tool "	14 x 16	Frame	2	100
2 watch-houses	5 x 5	"		40
Station-house	44 x 180	Brick	39	1,400
Tool "	10 x 14	Frame	21	40
Water tank & pump-house		Frame	3	1,000
2 watch-houses	5 x 5	"		40
Station-house	16 x 40	"	3	400
" "	25 x 100	"	36	400
Tool "	10 x 14	"		15
Total Johnson county				**5,435**
Station-house	16 x 38	Frame	17	100
Pump "	14 x 16	"	15	25
Tool "	12 x 15	"	6	40
Coal "	10 x 14	"	6	20
Water tank	16 x 20	"	5	500
Passenger-house	21 x 51	"	4	900
Freight "	16 x 40	"	5	275
Tool "	12 x 16	"	8	40
" "	12 x 16	"	3	50
Engine "	32 x 40	"	17	100
Supervisor's office	14 x 22	"	9	75

Schedule No.

	County.	Township.	Descri Name of station.
			Indianapolis
			Belt Crossing
		Warren	Cumberland
			Irvington
	Miami	Jackson	Converse
			Amboy
		Harrison	North Grove
			McGrawsville
		Pipe Creek	Bunker Hill
	Newton	Grant	Goodland
		Jefferson	Kentland
			Effner
237	Porter	Pleasant	Kouts

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Coke & coal bin	14 x 52	Frame	7	15
Ice-house	30 x 50	"	9	100
Freight-house	80 x 400	Brick	20	12,000
" "	80 x 200	"	8	8,000
3 watch "	6 x 6	Frame	7	45
1 " "	6 x 6	"	4	20
Tool "	14 x 20	"	7	25
Yard office	16 x 24	"	11	150
Watch-house	6 x 6	"	2	20
Car-inspector's office	14 x 16	"	1	60
7 watch-houses	5 x 5	"	7	140
Yardmaster's office		"	2	75
Telegraph office		"		200
Tool-house	14 x 16	"	4	100
Station-house	20 x 40	"	10	450
Tool-house	10 x 14	"	12	15
Station-house	18 x 30	Brick	17	400
Tool "	12 x 16	Frame	9	20
Total Marion county				**84,885**
Station-house	18 x 52	Frame	10	550
Tool-house	12 x 16	"	5	45
Station-house	16 x 40	"	6	500
Water-tank	16 x 20	"	9	450
Pump-house	12 x 18	"	9	50
Station "	16 x 40	"	3	500
Tool "	12 x 16	"	3	50
Coal "	8 x 10	"	8	10
Station "	18 x 52	"	10	550
Tool "	12 x 16	"	2	50
Transfer "	14 x 20	"	15	50
Coal "	8 x 16	"	8	10
Total Miami county				**2,815**
Station-house	20 x 60	Frame	19	125
Tool "	12 x 16	"	2	45
Water tank	16 x 20	"	1	500
Pump-house	14 x 18	"	9	50
2 coal "		"		30
Station "	18 x 46	"	5	500
2 tool-houses	12 x 16	"	4	95
Coal-house	8 x 10	"	4	15
Engine-house	30 x 80	"	7	1,200
Station "	30 x 40	"	22	150
Total Newton county				**2,710**
Amount forward				**202,120**
Brought forward				**202,120**
Station-house	18 x 53	Frame	7	600
Pump "	14 x 33	"	9	30
2 tool-houses	12 x 16	"	8	80
Water tank	16 x 20	"	9	450

Schedule No.

County.	Township.	Descri Name of station.
	Boone	Hebran
Pulaski	Van Buren	Star City
	Monroe	Winamac
	Rich Grove	Denham
Randolph	Wayne	Union City
	Wayne	Saratoga Deerfield
	Franklin	Ridgeville
Rush	Walker	Manilla
	Rushville	Rushville
Scott	Vienna	Vienna Marshfield
		Scottsburg
	Jennings	Austin
Shelby	Washington	Flat Rock
	Addison	Shelbyville

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Coal hoist		Frame	7	750
Passenger-house	14 x 40	"	24	100
Freight "	20 x 34	"	25	75
Tool "	12 x 16	"	5	40
Coal "	8 x 10	"	7	20
Total Porter county				**2,145**
Station-house	16 x 37	Frame	21	40
Tool "	12 x 16	"	5	40
Freight "	16 x 32	"	29	150
Passenger-house	23 x 50	"	8	800
2 tool-houses	12 x 16	"	7	80
Water tank	16 x 20	"	9	500
Pump-house	14 x 18	"	9	35
2 coal-houses		"		65
Tool-house	12 x 16	"	2	50
Total Pulaski county				**1,760**
Station-house	16 x 44	Frame	8	50
Store "	14 x 24	"	8	100
Coal "	10 x 12	"	5	20
Tool "	12 x 16	"	5	45
" "	"	"	8	40
2 coal-houses		"		35
Water tank	16 x 20	"	5	500
Pump-house	14 x 18	"	5	60
½ station-house	71 x 71	"	1	900
Old " "	12 x 32	"	6	90
Coal "	10 x 12	"	4	20
Tool "	10 x 16	"	6	45
½ watch "	6 x 6	"	7	5
Total Randolph county				**1,910**
Tool-house	10 x 20	Frame	Old	20
Station "	40 x 55	Brick	28	500
Tool "	10 x 14	Frame	Old	10
Total Rush county				**530**
Station-house	13 x 65	Frame	25	300
Water tank	16 x 20	"	6	500
Pump-house	6 x 10	"	6	50
Station "	22 x 80	"	18	600
Tool "	10 x 15	"	Old	10
Station "	16 x 40	"	3	400
Tool "	12 x 12	"	Old	10
Total Scott county				**1,870**
Station-house	16 x 40	Frame	2	400
" "		"	6	1,200
Water tank		"	5	400
Total Shelby county				**2,000**
Amount forward				**212,335**

Schedule No.

	County.	Township.	Descri Name of station.
238	Starke	Wayne	North Judson
		Railroad	English Lake
	Tipton	Madison	Curtisville
	Wayne	Wayne	Cincinnati div. Richmond
		Centre	Centreville
		Jackson	Germantown
			Cambridge City
		Clay	Dublin Greensfork
		Jefferson	Hagerstown
	White	Jackson	Idaville
		Union	Monticello

5—Continued.

ption of all kinds of buildings on "right of way."				True cash value.
For what use.	Dimensions.	Kind.	Age.	
Brought forward				**212,335**
Station-house	18 x 55	Frame	6	600
Tool "	12 x 16	"	6	40
Car-repair "	9 x 12	"	7	10
Coal "	8 x 10	"	6	25
Station "	14 x 38	"	8	400
Tool "	12 x 16	"	5	40
Pump "	16 x 24	"	9	35
Water tank	16 x 20	"	9	450
Total Stark county				**1,600**
Water tank	16 x 20	Frame	12	150
Pump-house	14 x 18	"	7	40
Total Tipton county				**190**
Jet. signal tower	12 x 12	Frame	8	200
Passenger-house	70 x 250	Brick	20	18,000
Freight "	30 x 310	"	10	5,000
Machine shops	100 x 210	"	19	9,000
Watch-house	10 x 10	Stone	8	190
5 watch-houses	5 x 8	Frame	10	90
Tool-house	12 x 16	"	12	10
Telegraph office	7 x 10	"	8	90
Supply-house	12 x 16	"	8	160
Interlocking tower	12 x 12	"	4	250
Lamp-room	8 x 24	"	10	45
Water tank	16 x 23	"	2	500
Storehouse	16 x 24	"	11	45
" "	20 x 32	"	5	60
Freight "	26 x 122	Brick	18	2,500
Station "	35 x 200	"	27	1,000
Tool "	12 x 16	Frame	10	25
Watch "	6 x 6	"	10	20
Station "	35 x 125	"	35	200
Tool "	14 x 16	"	1	40
½ passenger-house	35 x 100	"	26	500
Tool "	12 x 16	"	10	20
Engine "	47 x 90	Brick	8	600
Tool "	12 x 16	Frame	6	30
Water tank	18 x 20	"	12	400
Pump-house	12 x 20	"	12	100
Store "	16 x 24	"	11	50
Freight "	50 x 74	Brick	26	1,000
Station "	36 x 135	"	37	300
½ " "	25 x 63	Frame	32	100
½ " "	18 x 56	"	17	150
Pump "	20 x 26	"	5	50
Water tank	14 x 18	"	5	500
Total Wayne county				**41,225**
Tool-house	12 x 16	Frame	1	45
Coal "	8 x 10	"	5	15
Station "	20 x 60	"	12	250

Schedule No.

	County.	Township.	Descri Name of station.
			W. of Monticello
239	White	Honey Creek	Reynolds
		Princeton	Wolcott

240 [Endorsed:] Return of P., C., C. & St. L. Railway Company. April 1, 1892. Received June 15th, 1891. J. O. Henderson, auditor of state.

STATE OF PENNSYLVANIA, } ss:
Allegheny County, }

Jos. Wood,* general manager, superintendent, and S. B. Liggett, secretary, of the Pitts., Cin., Chj. & St. Louis Railway Company, being duly affirmed, sworn, respectively, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railway company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891, to the best of their knowledge and belief.

JOSEPH WOOD, *Gen'l Manager.**
S. B. LIGGETT, *Sec'y.*

Subscribed, affirmed, and sworn to before me this 12th day of June, 1891.

†M. H. SHANE,
Notary Public.

* General superintendent or general manager.
† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Water tank	14 x 20	Frame	18	100
Pump-house	14 x 18	"	11	50
Tool "	12 x 16	"	3	50
Coal "	8 x 10	"	4	15
Supervisor's office	14 x 24	"	2	80
Tool-house	12 x 16	"	5	45
White county carried forward				600
Amount forward				**255,350**
Brought forward				**255,350**
" "				600
Station-house	18 x 52	Frame	11	550
Tool "	12 x 16	"	3	50
Station "	18 x 52	"	17	100
Pump "	12 x 16	"	9	50
Water tank	20 x 55	"	4	500
Total White county				**1,850**
Grand total P., C., C. & St. L. R'y Co.				257,200

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891 for the year 1891, as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

J. O. HENDERSON,
Auditor of State.

241 And also the plaintiff, to further sustain the issues on its part, offered the following evidence:

J. T. BROOKS, being duly sworn, on his oath testified as follows:

I am and for nearly two years last past have been second vice-president and general counsel of the plaintiff company, and for about fifteen years prior thereto was general counsel for the railway corporations consolidated into the plaintiff corporation. During the time when I was general counsel as aforesaid I had general knowledge of all transactions of the said companies so consolidated in respect to the purchase, sale, lease, and operation of various lines of railways in Indiana and Ohio, and of the values of railway property in said States, and since I became second vice-president of the plaintiff corporation I have had the immediate charge and direction of the negotiations of the plaintiff corporation with respect to the purchase, sale, lease, and operation of various lines of railway in Indiana and Ohio, and have had immediate and familiar knowledge of the cost of constructing, maintaining, and operating the plaintiff's lines of railway and the railroads in the State of Indiana and in other States, and have been familiar with estimating the values of railroad properties as determined by the cost of construction and equipment, the market value of the stocks and bonds, and the gross and net earnings, and all other matters affecting their value. During the years 1890 and 1891 I was acquainted with and knew the values of all the property of the corporations consolidated into the plaintiff company and all the property of the plaintiff company included within the description of "railroad track" and
242 "rolling stock," as the same are defined by the statutes of Indiana.

I am and have been for two years last past acquainted with the average cash value per mile of the property of the plaintiff corporation included within the description of "railroad track" and rolling stock," as defined by the statutes of Indiana, in Indiana, and also in each of the States outside of Indiana into or through which the lines of plaintiff corporation have during said time extended.

243 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "Considering the cost of the construction and equipment of the railroad properties in Indiana, which have been consolidated into the plaintiff, the market value of the stocks and bonds, and the gross and net earnings of said railroad corporations within the State of Indiana, and all other matters affecting the value of the 'railroad track,' as hereinafter defined, belonging to or controlled by the said corporations on the first day of April, 1890, and of the 'rolling stock,' as hereinafter defined, belonging to or leased, hired, used, or operated by said corporations on said date, what, in your opinion, was the true cash value on the first day of April, 1890 (by which is meant the price which could have been obtained at private sale and not at forced or auction sale), of the 'railroad track' (by which is meant right of way, including superstructures, main, side, or sec-

ond track, and turnouts, turn-tables, telegraph poles, wires, and instruments and other appliances, and the stations and improvements on right of way, excepting machinery, stationary engines, and other fixtures) belonging to or controlled by said corporations on said date, and the 'rolling stock' belonging to or leased, hired, used, or operated by the said corporations on said date in each of the counties through or into which the lines of the said railroad corporations extended on said date, and the aggregate of said values in the whole State of Indiana?"

244 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

245 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

246 And counsel for plaintiff thereupon stated that they proposed to prove by the witness, in answer to the question, that the true cash value, as defined in the question, on the first day of April, 1890, of the property denominated "railroad track," defined in the question, belonging to or controlled by the corporations which were consolidated into the plaintiff corporation on said date, and of the "rolling stock" belonging to or leased, hired, used, or operated by said corporations on said date, taking into consideration the items and matters mentioned in said question, in the various counties of Indiana through or into which the said railway lines extended on said date, was as follows:

247	In Marion county	$402,774 00
	In Lake county	304,526 00
	In La Porte county	92,892 00
	In Porter county	212,406 00
	In Starke county	117,612 00
	In Pulaski county	288,587 00
	In Cass county	753,126 00
	In White county	366,375 00
	In Jasper county	118,138 00
	In Newton county	188,403 00
	In Howard county	197,949 00
	In Tipton county	155,767 00
	In Hancock county	254,233 00
	In Johnson county	309,695 00
	In Bartholomew county	444,606 00
	In Jackson county	273,417 00
	In Scott county	169,819 00
	In Clark county	540,337 00
	In Floyd county	45,809 00
	In Jefferson county	109,286 00
	In Jennings county	133,474 00
	In Shelby county	131,819 00
	In Rush county	133,463 00

In Fayette county	$52,308 00
In Wayne county	698,462 00
In Jay county	131,951 00
In Randolph county	219,019 00
248 In Henry county	601,338 00
In Madison county	312,023 00
In Miami county	242,015 00
In Grant county	351,147 00
In Blackford county	185,277 00
And that the aggregate of said values was	$8,538,053

249 To the admission of which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and in refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

250 And thereupon counsel for plaintiff propounded to the witness the following question, to wit:

Q. "Considering the cost of construction and equipment of the plaintiff's properties in Indiana, the market value of the stocks and bonds, and the gross and net earnings of the plaintiff corporation within the State of Indiana, and all other matters affecting the value of the 'railroad track,' as hereinafter defined, belonging to or controlled by plaintiff corporation within said State of Indiana on the first day of April, 1891, and of the 'rolling stock,' as hereinafter defined, belonging to or leased, hired, used, or operated by plaintiff corporation on said date within the State of Indiana for its business within said State, what, in your opinion, was the true cash value (by which is meant the price which could have been obtained at private sale and not at forced or auction sale) of the 'railroad track' (by which is meant right of way, including superstructures, main, side, or second track, and turnouts, turn-tables, telegraph poles, wires, instruments, and other appliances, and the stations and improvements on right of way, excepting machinery, stationary engines, and other fixtures) belonging to or controlled by plaintiff corporation on said date within said State of Indiana, and of the 'rolling stock' belonging to or leased, hired, used, or operated by the plaintiff corporation on said date for its business in said State, in each of the counties of said State through or into which the railway lines of the plaintiff extended on said date, and the aggregate of said values in the whole State of Indiana on said dates?"

251 To which question the witness made the following answer, to wit:

A. "The true cash value, as defined by the question, of the property denominated 'railroad track,' as defined in the question, belonging to or controlled by the plaintiff corporation on the first day of April, 1891, within the State of Indiana, and of the 'rolling stock'

belonging to or leased, hired, used, or operated by the plaintiff corporation on said date, within the State of Indiana, for its business in said State, taking into consideration the items and matters mentioned in said question, in the various counties in Indiana through or into which the lines of the plaintiff corporation extended on said date, was, in my opinion, on the first day of April, 1891, as follows, to wit:

252	In Marion county	$402,774 00
	In Lake county	304,526 00
In La Porte county		92,892 00
In Porter county		212,406 00
In Starke county		117,612 00
In Pulaski county		288,587 00
In Cass county		753,126 00
In White county		366,375 00
In Jasper county		118,138 00
In Newton county		188,403 00
In Howard county		197,949 00
In Tipton county		155,767 00
In Hancock county		254,233 00
In Johnson county		309,695 00
In Bartholomew county		444,606 00
In Jackson county		273,417 00
In Scott county		169,819 00
In Clark county		540,337 00
In Floyd county		45,809 00
In Jefferson county		109,286 00
In Jennings county		133,474 00
In Shelby county		131,819 00
In Rush county		138,463 00
In Fayette county		52,308 00
In Wayne county		698,462 00
In Jay county		131,951 00
	In Randolph county	219,019 00
253	In Henry county	601,338 00
	In Madison county	312,023 00
In Miami county		242,015 00
In Grant county		351,147 00
In Blackford county		185,277 00
	And the aggregate of said values was	$8,538,053 00

254 And thereupon counsel for plaintiff propounded to the witness the following question, to wit:

Q. State, if you know, the length in miles on the first day of April, 1891, of the main railroad track belonging to the plaintiff corporation, wherever situated, and what number of miles of said track were, on said date, situated in the State of Indiana, in the State of Illinois, in the State of Ohio, in the State of West Virginia, and in the State of Pennsylvania, respectively.

To which question the witness made the following answer, to wit:

A. The entire length of the main track belonging to the plaintiff corporation on April first, 1891, was one thousand one hundred and forty-five and eighty-seven hundredths (1,145.87) miles, of which six hundred and forty-seven and forty-two hundredths (647.42) miles were in Indiana, twenty-seven and ninety-nine one-hundredths (27.99) miles in Illinois, four hundred and three and thirty-three one-hundredths (403.33) miles in Ohio, nineteen and forty-eight one hundredths (19.48) miles in West Virginia, and forty-seven and sixty-five one-hundredths (47.65) miles in Pennsylvania.

255 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State what was the average cash value per mile of the property of the plaintiff corporation included within the description of 'railroad track' and 'rolling stock' as defined by the statutes of Indiana (the description of railroad track in the statutes of Indiana being as follows: The right of way, including superstructures, main, side, or second track, and turnouts, turn-tables, telegraph poles, wires, instruments, and other appliances, and the stations and improvements on such right of way, excepting machinery, stationary engines, and other fixtures) on the first day of April, 1891, in the State of Indiana, in the State of Illinois, in the State of Ohio, in the State of West Virginia, and in the State of Pennsylvania, considering the 'railroad track' of plaintiff in each of said States respectively and the 'rolling stock' used upon the railway lines of plaintiff in each of said States respectively as constituting a unit separate and distinct from the 'railroad track' of plaintiff in either of said other States, together with the 'rolling stock' used upon the railway lines of plaintiff in either of said other States."

256 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegation of the complaint.

257 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

258 And thereupon counsel for plaintiff stated that they proposed to prove by the witness in answer to the question that the average cash value per mile of the property of plaintiff defined in said question on the first day of April, 1891, in the State of Indiana was thirteen thousand two hundred dollars ($13,200.00); in the State of Illinois was seventy-six thousand nine hundred dollars ($76,900.00); in the State of Ohio was twenty-four thousand two hundred dollars ($24,200.00); in the State of West Virginia was twenty-two thousand seven hundred dollars ($22,700.00), and in the State of Pennsylvania was fifty-four thousand seven hundred dollars ($54,700.00).

259 And thereupon the defendants, by their counsel, objected to the said proposed testimony upon the same grounds as to the question in answer to which the proposed testimony was offered.

And thereupon the court sustained the objection of the defendants

and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

260 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether or not on the first day of April, 1891, the plaintiff owned terminal facilities in the city of Chicago, Illinois, and in the city of Pittsburgh, Pennsylvania, and what was the character of the same and the value of the main railroad track of the plaintiff corporation situated in said cities, together with the said terminal facilities, as compared with the value of any corresponding number of miles of the plaintiff's said track situated in the State of Indiana."

To which question the witness made the following answer, to wit:

A. On the first day of April, 1891, the plaintiff was the owner of valuable facilities in the city of Chicago, Illinois, and in the city of Pittsburgh, Pennsylvania.

The fifteen miles of the plaintiff's railroad track situated in the city of Chicago passed through a populous and wealthy portion of said city, terminating at the Union passenger station and depot, in the heart of said city, of which station and depot the plaintiff corporation owned a large part. The plaintiff corporation also owned and occupied, in connection with the portion of said railroad, extensive freight yards, situated in the business portion of Chicago, through which its freight traffic within said city was carried on. The plaintiff also owned, in connection with the fifteen miles of track situated in said city, a large number of side tracks and switches connecting with the various manufactories and other industries in said city, aggregating more than thirty-one miles, over which the traffic of the plaintiff's railroad to and from Chicago was car-

261 ried on. There were situated on the right of way of the plaintiff's railroad in Chicago, in addition to the Union station and the side tracks and switches, a large number of valuable improvements, such as passenger and freight stations, elevators, and other structures belonging to the plaintiff corporation and which added largely to its traffic and the value of its line in Chicago.

On the first day of April, 1891, the railroad track of the plaintiff corporation, for a distance of about three miles, passed through a populous and manufacturing portion of the city of Pittsburgh, crossing the Ohio and Monongahela rivers on valuable and expensive bridges and reaching the Union station in Pittsburgh through a valuable and expensive tunnel beneath the city. Along the entire length of this three miles of railroad track there were extensive freight yards, side tracks, and switches belonging to the plaintiff and used by the plaintiff, aggregating many miles, and connecting with a large number of iron and steel mills and manufactories of various kinds, from which industries the plaintiff received a large amount of valuable traffic which was transported over parts of its line of railway. There were also situated along this three miles of

track and its sidings many other valuable improvements, consisting of coal tipples, elevators, freight and passenger stations and other structures, and valuable and costly masonry.

On the first day of April, 1891, there was no city on the line of the plaintiff's railway in Indiana where the plaintiff had terminal facilities of such extent and value as the terminal facilities in
262 Chicago and Pittsburgh. On the contrary, there were no terminal facilities of the plaintiff in any city in Indiana which were worth more than a small fraction of the value of the terminal facilities in Chicago and Pittsburgh or either of them.

The plaintiff did not own any urban or suburban passenger or freight stations in the State of Indiana other than central or union stations, which were beyond the average value of the stations on the plaintiff's lines in the State of Indiana. In no city in Indiana through which the lines of plaintiff ran was the plaintiff's railway connected by side and switch tracks with more than a small proportion of the number of industries and manufactories with which the plaintiff's lines were connected in the cities of Chicago or Pittsburgh or either of them.

There were no manufactories or industries on the line of the plaintiff in Indiana of such magnitude as those situated on the line of the plaintiff's railway in the cities of Chicago or Pittsburgh or either of them, nor did the manufacturing interests and industries on the line of the plaintiff's railway in Indiana furnish more than a small proportion of the amount of business to the plaintiff's lines as compared with that furnished by the manufactories and industries situated upon the plaintiff's lines in the cities of Chicago and Pittsburgh or either of them. In no city in Indiana were there improvements on the right of way on any line of main track amounting to more than a small proportion of the improvements upon the right of way in the city of Chicago or the city of Pittsburgh or either of them.

All, except a small fraction of the plaintiff's lines in Indiana, run through a sparsely settled farming country, whereas the plaintiff's lines in the cities of Chicago and Pittsburgh run through densely populated and wealthy urban and suburban residence and
263 manufacturing districts.

On the first day of April, 1891, the true cash value, as defined by the statutes of Indiana, of the twenty-seven miles of the "railroad track," as defined by the statutes of Indiana, of the plaintiff corporation, situated in Illinois, together with the terminal facilities above described, was, in my opinion, five times as much as the true cash value, as defined by the statutes of Indiana, of any twenty-seven miles of the "railroad track," as defined by the statutes of Indiana, belonging to the plaintiff corporation in the State of Indiana.

On the first day of April, 1891, the true cash value, as defined by the statutes of Indiana, of the three miles of "railroad track," as defined by the statutes of Indiana, belonging to the plaintiff corporation, situated in the city of Pittsburgh, together with the terminal facilities above described, was five times as much as the true cash

value, as defined by the statutes of Indiana, of any three miles of railroad track, as defined by the statutes of Indiana, belonging to the plaintiff and situated within the State of Indiana.

264 And thereupon the plaintiff, by its counsel, propounded *the* the witness the following question, to wit:

Q. "State, if you know, whether on the first day of April, 1891, the plaintiff owned rolling stock, whether passenger or freight, which was exclusively used within the limits of a single one of the five States, Pennsylvania, West Virginia, Ohio, Indiana, and Illinois; and, if you state that the plaintiff had on said date any such rolling stock, describe particularly the district within which and the purpose for which such rolling stock was so exclusively used and the value of the same."

265 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegations of the complaint.

266 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

And thereupon counsel for plaintiff stated that they proposed to prove by the witness, in answer to the question, that on the first day of April, 1891, the plaintiff corporation owned a very large and valuable equipment of passenger rolling stock in and adjacent to the city of Chicago; that this rolling stock is used and operated wholly and solely in urban and suburban traffic and transportation in and near to the city of Chicago, and no part of it was ever used or operated on or over the lines of railway of the plaintiff corporation in Indiana or upon or over any part of the plaintiff's lines in Indiana.

That on the first day of April, 1891, the plaintiff corporation also owned a large amount of rolling stock which was situated in and adjacent to the city of Pittsburgh, which was likewise used wholly and solely in urban and suburban traffic and transportation in and near to the city of Pittsburgh, and no part of which was ever used or operated on or over the plaintiff's lines in Indiana or any part of plaintiff's lines in Indiana; that the value of the rolling stock above described on the first day of April, 1891, was seven hundred thousand dollars ($700,000.00).

That on the first day of April, 1891, the plaintiff corporation also owned a very large and valuable equipment of freight rolling stock, which was situated in the States of Ohio and Pennsylvania and which was used and operated wholely and solely in those States in the transportation of coal, ores, and mineral from and to points within these States, and no part of which was ever operated

267 upon or over plaintiff's lines in Indiana or upon any part of plaintiff's lines in Indiana; that the value of this rolling stock last above described on the first day of April, 1891, was one million five hundred thousand dollars ($1,500,000.00).

To which proposed testimony the defendants, by their counsel, at the time objected upon the same grounds as to the question in answer to which said proposed testimony was offered.

And thereupon the court sustained said objection of the defendants and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

268 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State, if you know, whether on the first day of April, 1891, the plaintiff corporation owned, leased, hired, used, or operated any rolling stock which it used and operated wholly and solely within the State of Indiana, either for urban or suburban traffic and transportation or for special transportation of coal, ores, or minerals or for any other purpose whatever, from and to points wholly within the State of Indiana."

To which question the witness made the following answer, to wit:

A. "On the first day of April, 1891, the plaintiff did not own, lease, hire, use, or operate any rolling stock which it used and operated exclusively within the State of Indiana, either for urban or suburban traffic and transportation or for special transportation of coal, ores, or minerals or for any other purpose whatever, from and to points wholly and solely within the State of Indiana. On the contrary, the entire traffic and transportation on the lines of railway of plaintiff within the State of Indiana was on said date confined wholly to the ordinary local and interstate traffic and transportation over and upon plaintiff's lines of railway."

269 And thereupon counsel for the plaintiff propounded to the witness the following question, to wit:

Q. "State whether the plaintiff corporation or any officer, agent, or representative of the plaintiff corporation had any notice whatever of the assessment and valuation of the plaintiff's railroadd as made by the State board of tax commissioners of Indiana at their session in 1891 after said assessment and valuation was made by said board and before the final adjournment of said board."

To which question the witness made the following answer, to wit:

A. "The plaintiff corporation did not nor did any officer, agent, or representative of the plaintiff corporation have any notice whatever of the assessment of the plaintiff's railroad as made by the State board of tax commissioners for the year 1891 after the assessment was made by said board, on the 8th day of September, 1891, and before the final adjournment of said board, on September 11th, 1891."

270 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether the plaintiff corporation or any officer, agent, or representative of the plaintiff corporation was before the State board of tax commissioners, during its session in the year 1891, concerning the taxation of the 'railroad track' and 'rolling stock' of the plaintiff corporation at any other time than on the 25th day of August, 1891, as shown by the report of the proceedings of said

board, and whether at said time or at any other time during the session of the State board in the year 1891 the State board notified the plaintiff or any officer, agent, or representative of the plaintiff or gave to the plaintiff any knowledge or intimation of the assessment and valuation of the railroad of plaintiff corporation which said board proposed and intended to make."

To which question the witness made the following answer, to wit:

A. "No officer, agent, or representative of the plaintiff was before the State board of tax commissioners, during its session in the year 1891, concerning the valuation and assessment of the 'railroad track' and 'rolling stock' of plaintiff corporation, except on August 25th, 1891, as shown by the report of the proceedings of said board, and neither at that time nor at any other time during the session of the State board did the board give to the plaintiff or to any officer, agent, or representative of the plaintiff any notice, knowledge, or intimation of the assessment of the railroad of plaintiff, which said board proposed and intended to make."

271 H. B. DU BARRY, being duly sworn, on his oath testified as follows:

I am the assistant engineer of the plaintiff corporation and have held this position since the organization of the plaintiff corporation. Prior to that time I was assistant engineer of the companies entering into the consolidation forming the plaintiff corporation, and as such officer had charge of all matters pertaining to the valuation and taxation of the railroads and properties of the companies entering into the consolidation forming the plaintiff corporation both in Indiana and in the other States in which the lines of said railroad extended.

As assistant engineer it is my duty to attend to the making of all returns, statements, and explanations made on behalf of the plaintiff to the taxing officers and tribunals having jurisdiction to value and assess the property of the plaintiff for taxation.

And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "Did you in pursuance of your duties in this respect, prior to the assessment and valuation by the State board of tax commissioners of railroad property in 1891, prepare and deliver to the State board of tax commissioners or to any person or officer for delivery to said board any written statement of facts bearing upon the assessment and valuation for taxation of the 'railroad track' and 'rolling stock' of the plaintiff in Indiana other than the return required by law to be made by the plaintiff corporation to the auditor of state or any written statement in connection with or explanation of said return? And if you made any such written statement, please produce a copy of it and put it in evidence as part of your answer to this question."

272 A. On August 22, 1891, in pursuance of my duties as assistant engineer of the plaintiff corporation and on behalf of the plaintiff corporation, I prepared a written statement of facts

bearing upon the valuation and assessment for taxation of the 'railroad track' and 'rolling stock' of the plaintiff in Indiana, which statement contained not only facts in addition to those stated in the annual return of the plaintiff for 1891, made to the auditor of state as required by law, which was then in the hands of the State board of tax commissioners, but also facts in explanation and correction of said return, and said written statement was delivered by me to the State board of tax commissioners on August 25th, 1891. Said written statement was in the words and figures following, to wit:

273 PITTSBURGH, PA., *Aug.* 22, 1891.

To the honorable board of tax commissioners for the State of Indiana, Indianapolis, Ind.

GENTLEMEN: I represent the P., C., C. & St. L. R'y Co. and the I. & V. R. R. Co. The P., C., C. & St. L. R'y Co. is a new corporation since the last meeting of this board, having a length of 1,085.03 miles in the States of Pennsylvania, West Virginia, Ohio, Indiana, and Illinois. The said railway is by consolidation composed of the P., C. & St. L. R'y, 213.78 miles, entirely outside of Indiana; the C., St. L. & P. R. R., having 135.88 miles in Ohio, 27.99 miles in Illinois, and 417.11 miles in Indiana, with a total length of 580.98 miles; the Cincinnati and Richmond railroad, having 59.96 miles in Ohio and 7.96 miles in Indiana, with a total length of 67.92 miles; and of the J., M. & I. R. R., having a length of 222.35 miles, all in Indiana.

The following table shows the gross earnings of the P., C., C. & St. L. R'y Co. for 1890, by divisions, together with its length and per cent. of gross earnings in and out of Indiana—total length, 1,085.03:

274	Length outside of Indiana.	Per cent. of length outside of Indiana.	Length in Indiana.	Per cent. of length in Indiana.	Gross earnings.	Gross earnings per mile.	Per cent. of gross earnings outside of Ind.	Per cent. of gross earnings in Ind.
P'g'h div.	213.78	19.70	0.00	------	6,275,560	29,153	40.61	
Ind. "	115.30	10.63	71.81	6.62	3,047,930	12,561	14.79	4.93
Ch'go "	48.57	4.47	242.60	22.36	3,116,192	10,702	4.44	15.73
Rich. "	59.96	5.53	108.69	10.02	1,178,606	6,652	2.82	4.81
Lou. "	0.00	------	222.35	20.49	1,834,643	8,146	------	11.87
Cin'ti "	------	------	1.97	0.18				
	437.61	40.33	647.42	59.67	15,452,931	13,502	62.66	37.34

The Pittsburgh division extends from Pittsburgh, Pa., to Columbus, Ohio.

The Indianapolis division extends from Columbus, Ohio, to Indianapolis, Ind.

The Chicago division extends from Bradford Junct., O., to Ch'go, Ills., with a branch from Logansport, Ind., west to the Ills. State line.

The Richmond division extends from Redcomb Junction (7 miles east of Cincinnati, O.) to Anoka Junction, Indiana.

The Louisville division, main line, extends from Indianapolis, Ind., to Jeffersonville, Ind., including the New Albany and Jeffersonville branches, together with the Madison branch from Columbus, Ind., to Madison, Ind., and the Cambridge branch from Columbus, Indiana, to Cambridge City, Indiana.

The Cincinnati division (that part owned by the P., C., C. & St. L. R'y Co.) extends from the Ohio State line west to a junction with the Richmond division, all in Wayne county, Indiana.

From the above it will appear that the P., C., C. & St. L. R'y
275 has a length of 437.61 miles outside of the State of Indiana, or 40 per cent. of its total length; while its earnings, computed from the best obtainable source, show that the 437.61 miles outside of the State have a gross earnings of 62.66 per cent. of its total earnings, thereby showing that its greatest earning power is outside of the State, and it would be unfair and unjust to compute its earning capacity by taking the result as shown in the report required by the authorities of Indiana, to wit, "its average gross earnings per mile over the entire line." This result, as given in the annual return to the State auditor, is $13,502 per mile; but if we take the result as given by the above table, it will be seen that its average gross earnings in Indiana is $8,912 per mile, and not $13,502.

This result I have for 15 years and over, by other forms of argument, endeavored to impress upon former boards, and I present it at this time in a form that I think will convey to you a different idea from what you have heretofore entertained.

Regarding rolling stock you will receive for the year 1891 a very large addition to the amount heretofore returned. This is brought about by the consolidation with our lines outside of Indiana, where the larger part has heretofore been owned. This consolidation will take from Ohio and other States a valuation of, say, $900,000, which will be added to Indiana.

It has been the custom of this company for years past to ascertain the actual value of rolling stock, based upon the value fixed by the master mechanics and master car-builders' associations, who take the prime cost and reduce a percentage for each year of age. Of this value so ascertained 60 per cent. has been returned by this company, and the rule has been followed for the year 1891.

276 The State board heretofore has increased the value so ascertained so that it represents a value of 71 per cent. of its actual value. This should be taken into consideration when you fix the value for 1891.

The following table shows the valuation per mile of main track of the different divisions of the P., C., C. & St. L. R'y in Indiana as they should have been for the year 1890, in my opinion, based upon an experience of 17 years engaged in the occupation of looking after the tax interests of my road:

Ind'p'l's div.		71.81	miles at	$13,000	$933,530
Ch'go	" (main line)	182.41	" "	10,000	1,824,100
"	" (branch)	60.19	" "	5,000	300,950
Rich.	"	108.69	" "	8,000	869,520
Cin'ti	"	1.97	" "	8,000	15,760
Lou.	" (main line)	114.41	" "	10,000	1,144,100
		539.48	av'g	$9,431	$5,087,960
Lou.	" (branches)	107.94	at	4,000	431,760
		647.62	av'g	$8,526	$5,519,720

This 539.48 miles of main track were assessed in 1890 at different rates, averaging $10,781 per mile, and the 107.94 miles of branch track were assessed in 1890 at $4,500 per mile. These results would show that the main track was assessed at the rate of $1,350 per mile for the main line and $500 per mile for the branches more than their true values, making a total over assessment of $782,368. In this I particularly refer to the assessment of the Louisville division, the old J., M. & I. R. R. In 1890 the main line of this road
277 was reduced from $11,000 per mile to $10,000, and in 1890, without any just cause or reason, it was increased to $12,000 per mile. This fact I desire to impress upon the board on account of its unfairness.

I would here insert that the average net earnings per mile, based upon the table above, would be $2,306 per mile, from which is to be deducted the fixed charges on the bonded indebtedness.

In making the assessment for the year 1891 it is presumed that you will follow the precedent existing since 1873 and place a value of the main track on the main line at a uniform rate and on the branches, such as the Madison and Cambridge branches of the J., M. & I. R. R., at a reduced rate.

The rolling stock should, as has been set by precedent and by statute, be assessed at a uniform rate per mile on the main lines and branches.

Permit me here to call your attention to the fact all real estate in Indiana is assessed once every six (6) years, and that railroad property, of all character, is assessed every year, and that I cannot, under these circumstances, see why, at the end of the six (6) years term, if you find that real estate is more valuable than it was six years before, that you should think the railroad property should be increased in the same proportion. You should realize the fact that railroad property is liable to increase or decrease yearly, and that the value of our system of railroads has been increased by the board over twenty (20) per cent. since 1885.

Regarding the Indianapolis and Vincennes railroad, but little can be said, except that its earning capacity is very low—scarcely worth noticing. The financial result for the year ending December
278 31st, 1890, shows the expenses for operating the road was 85½ per cent. of its gross earnings, thereby leaving out of the 14½ per cent. of net earnings, amounting to $66,690, a deficit of $136,430

to meet the fixed charges on the bonded debt. Further, it shows that it owes $2,284,083 for advances in the past 21 years to meet its fixed obligations. Such facts need no comment; they tell a very plain tale of a bad investment, and I can see no good reason why the valuation should be increased for the year 1891 over what it was for 1890.

Respectfully submitted.

(Signed) H. B. DU BARRY,
Assistant Engineer.

279 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "Was this statement true as to the facts stated therein?"

280 To which question the defendant at the time objected for the reason—

1st. That said evidence is irrelevant and immaterial.

2nd. That it is apparent that the statement of the witness is mere hearsay.

3rd. That it is not competent for the witness to prepare a statement containing numerous separate and distinct facts and then attempt to make evidence by testifying that the statement so made is true.

281 And thereupon the court overruled said objection; to which ruling of the court in overruling said objection the defendants, by their counsel, at the time excepted.

And thereupon the witness made the following answer, to wit:

A. "It was."

282 And thereupon the plaintiff, in order to further sustain the issues on its part, introduced as a witness ALEXANDER MCELEVEY, who, being duly sworn, testified as follows:

I am the assistant comptroller of the plaintiff corporation and have held that office for three years last past. As such officer I have charge of the reports and books of the plaintiff company showing the traffic of all of plaintiff's lines in Indiana and elsewhere and the receipts of plaintiff corporation from all the traffic, transportation, and commerce carried over all its railway lines during the year covered by the last official report of the plaintiff corporation, prior to the first day of April, 1891, and am familiar with the amount and source of all receipts of the plaintiff corporation from all kinds of traffic, transportation, and commerce carried on the plaintiff's lines during the years 1890 and 1891 and know what proportion of such receipts was from the transportation of property and passengers originating and terminating within the State of Indiana and what proportion of such receipts during said time was from the transportation of property and passengers arising from interstate traffic.

And thereupon the counsel *by* for the plaintiff propounded to the witness the following question, to wit:

Q. "State what per cent. of all the gross receipts of the plaintiff corporation for the fiscal year of the company next preceding the first day of April, 1891, from all traffic, transportation, and commerce on its lines in Indiana was derived from traffic, transportation, and commerce originating and ending wholly within the State of Indiana and what per cent. was derived from interstate traffic, transportation, and commerce."

283 To which question the defendant objects for the reason—

1st. That the evidence sought to be elicited is irrelevant and immaterial.

2nd. That it is apparent that the answer of the witness must be based upon reports and statements made to him by others, and therefore hearsay.

3rd. That said evidence, if admitted, does not in anywise tend to support the averments of the complaint.

284 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

285 And thereupon counsel for plaintiff stated that they proposed to prove by the witness, in answer to the question, that the percentage of the receipts of the plaintiff corporation for the fiscal year of the company next preceding the first day of April, 1891, from all traffic, transportation, and commerce on its lines in Indiana originating and ending wholly within the State of Indiana was thirty-four per cent. of the receipts from all traffic, transportation, and commerce on its lines in Indiana during said year, and that the receipts of plaintiff corporation during said year from interstate traffic, transportation, and commerce on its lines in Indiana was sixty-six per cent. of the receipts of the plaintiff corporation during said year from all traffic, transportation, and commerce on its lines in Indiana.

286 And thereupon the defendants, by their counsel, objected to the said proposed testimony upon the same grounds as to the question in answer to which the proposed testimony was offered.

And thereupon the court sustained the objections of the defendants and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

287 Hon. CLAUDE MATTHEWS, being duly sworn, on his oath testified as follows:

"I was secretary of state of the State of Indiana and *ex officio* a member of the State board of tax commissioners for the year 1891 and was present at the sessions of said board when the subject of the valuation and assessment of the property of the plaintiff corporation

was under consideration and when the valuation of plaintiff's property was fixed by said board."

And thereupon the counsel for plaintiff propounded to the witness the following question:

Q. "State whether or not during or before the consideration of the valuation and assessment of the railroad of the plaintiff corporation by the State board of tax commissioners in the year 1891 any personal examination or inspection was made of said property by said board as a board or by the individual members thereof in their official capacity for the purpose of ascertaining the value thereof."

To which question the witness made the following answer, to wit:

A. "The State board of tax commissioners did not, nor did any member thereof in his official capacity before or during the consideration of the valuation and assessment of the railroad of the plaintiff corporation by the said board in 1891, make any personal inspection or examination of said property for the purpose of ascertaining the value thereof. Different members of the board being personally acquainted with the railroad track and rolling stock of plaintiff in Indiana and its value, we did not deem it essential to make an official examination or inspection thereof."

288 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether or not the State board of tax commissioners, at its session for the year 1891, summoned before said board or examined under oath any person or persons acquainted with the true cash value of the plaintiff's property denominated 'railroad track' and 'rolling stock' and competent to testify as to the true cash value of said property."

To which question the witness made the following answer, to wit:

A. "The State board of tax commissioners, at its session for the year 1891, did not summon before said board or examine under oath any person or persons acquainted with the true cash value of the plaintiff's property denominated 'railroad track' and 'rolling stock' and competent to testify as to the true cash value of said property."

289 And thereupon plaintiff, by its counsel, propounded to the witness the following question:

Q. "Referring to the printed record of the State board of tax commissioners for the year 1891, from which it appears at page 80 that on September 8, 1891, the said board made its assessment for the year 1891 of the property of all the railroads in the State, having previously had such assessment under consideration, state whether between September 8th, 1891, and September 11th, 1891, when the State board finally adjourned, the board gave to the plaintiff or

to any officer, agent, or attorney of the plaintiff any notice whatever of the said assessment and valuation of plaintiff's railroad which said board determined upon and made on September 8th, 1891."

To which question the witness made the following answer, to wit:

A. "No notice whatever of the assessment and valuation of plaintiff's railroad which said State board had determined upon and made on September 8th, 1891, was given by said State board to the plaintiff or to any officer, agent, or representative of plaintiff between September 8th, 1891, and September 11th, 1891, the date of the final adjournment of the board."

290 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State whether the State board of tax commissioners at any time before September 8, 1891, when the assessment of the railroad of the plaintiff was finally determined upon and made, gave any notice, knowledge, or intimation to the plaintiff or to any officer, agent, or representative of the plaintiff of the assessment and valuation of the plaintiff's railroad which said board proposed and intended to make."

To which question the witness made the following answer, to wit:

A. "The State board of tax commissioners did not, at any time before September 8, 1891, when the assessment of the railroad of plaintiff was finally determined upon and made, give any notice, knowledge, or intimation to the plaintiff or to any officer, agent, or representative of the plaintiff of the assessment and valuation of plaintiff's railroad which said board proposed and intended to make."

291 And thereupon the plaintiff, by its counsel, propounded to the witness the following question, to wit:

Q. "State whether on September 8, 1891, when the assessment of plaintiff's railroad was determined upon and made by the State board of tax commissioners, said assessment was placed upon record and open to the inspection of the plaintiff's officers or agents; and if not so placed on record or open to inspection on September 8, 1891, state whether said assessment was placed upon record or open to the inspection of the officers or agents of the plaintiff at any time prior to the final adjournment of the State board on September 11, 1891."

To which question the witness made the following answer, to wit:

A. "After the assessment of the railroad track and rolling stock of plaintiff had been agreed upon on the 8th day of September, 1891, and while it was being transcribed by the clerk of the board, with the assessments of all other railroad companies, the assessment

s. made was subject to inspection by the officers of plaintiff in case they desired to make such inspection, but such assessment was not generally open to the inspection of the public until the assessment had been transcribed on the record and finally signed on the 11th day of September, 1891."

292 And thereupon the plaintiff, by its counsel, offered in evidence a copy of the annual return of the Terre Haute and Indianapolis Railroad Company made to the auditor of state for the year 1891 and duly certified by the auditor of state, said copy being in the words and figures following, to wit:

293 Auditor's

(This blank to be filed with auditor

Annual Return of the Terre Haute and Indianapolis Railroad Company

SCHEDULE

Showing the property denominated "railroad track" belonging to or controlled by required of railroad companies,

Counties.	Right of way and improvements thereon.						
	Acres.			Value of buildings on right of way. (See Schedule No. 5.)	Main.		
	No.	Hun.	Value, excluding improvements.		Miles.	Hun.	Value as listed to county.
Vigo	106	13	1,860	30,063	16	14	96,840
Clay	306	55	3,060	2,144	13	81	82,860
Putnam	239	10	2,390	2,164	21	13	126,780
Hendricks	225	47	2,250	1,439	19	65	117,900
Marion	89	93	24,050	8,096	9	17	54,696
Totals in State	967	18	23,610	43,906	79	90	479,076

294 SCHEDULE No. 2,

Showing the property denominated "rolling stock," whether owned, operated, or leased, in whole or in part, by the Terre Haute and Indianapolis Railroad Company, on the 1st day of April, 1891, as required of railroad companies, according to section 80, tax law 1891.

Description. For length of main track on which said rolling stock is used in each county, see Schedule No. 1.		No.	Average value.	Total listed value.
Locomotives, first class	Owned, operated, or leased in whole or in part.	25	2,400	60,000 00
Locomotives, second class		20	1,200	24,000 00
Passenger cars, first class		17	1,200	20,400 00
Passenger cars, second class		10	750	7,500 00
Pay cars		1	1,000	1,000 00
Officers' cars		1	1,000	1,000 00
Sleeping cars				
Dining and drawing room cars				
Postal cars		5	900	4,500 00
Combination cars		2	750	1,500 00
Baggage, mail, or express cars		16	475	7,600 00
Box cars		278	150	41,700 00
Stock cars		48	150	7,200 00
Coal cars		1008	130	131,040 00
Platform cars		166	115	19,090 00
Wrecking and camp cars		3	300	900 00
Ice and refrigerator cars		9	150	1,350 00
Fast-freight-line cars		85	125	10,625 00
Caboose cars		22	190	4,180 00
Tank or oil cars				
Pile-driving cars				
Push-cars		23	5	115 00
Hand cars		28	8	224 00
2 steam-shovels and 1 paint car				1,500 00
Total listed value of rolling stock				345,424 00

form.

of state between April 1 and June 1.)

to the Auditor of State, as Required by Section 85, *Tax Law* 1891.

No. 1,

the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, as according to section 85, tax law 1891.

Track.						Rolling stock.			Total value as listed to county.
Second main.			Side or turnout.						
Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	Miles.	Hun.	Value as listed to county.	
---	---	---	22	01	23,200	---	---	---	151,963
---	---	---	49	52	52,320	---	---	---	140,384
---	---	---	7	18	7,500	---	---	---	138,834
---	---	---	3	51	3,700	---	---	---	125,289
---	---	---	15	61	16,500	---	---	---	103,342
---	---	---	97	83	103,220	---	---	---	659,812

Length of main track on which said rolling stock is used in Indiana ..... 79 miles, 90 hund.

Length of main track on which said rolling stock is used elsewhere (describe such roads below) ..... — miles, — hund.

Total length of road ..... 79 miles, 90 hund.

In case a railroad owns, operates, or leases a line of railroad outside of the State, give the name of and length of each road, stating whether owned, operated, or leased, over which the above rolling stock is used and not assessed separately in another State.

Names of roads outside of the State over which the above rolling stock is used.

— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.
— miles, — hund.

Give name of company conveying passengers over your road in parlor, sleeping, or drawing-room cars. Pullman Palace Car Co.

Give name of express company doing business over your line. Adams Express Co.

Give names of fast-freight companies owning their own cars doing business over your line. ——.

Give name and address of president of your company. Wm. R. McKeen, Terre Haute, Indiana.

Give name and address of secretary of your company. Geo. E. Farrington, Terre Haute, Indiana.

Give name and address of gen'l manager or sup't of your company. Jno. G. Williams, Terre Haute, Indiana.

Give name and address of officer or agent appointed or authorized to transact business treated of in this blank with the State board of tax commissioners. Wm. R. McKeen or Jno. G. Williams, Terre Haute, Indiana.

295 SCHEDULE No. 3,

Showing the number of ties in track per mile, the weight of iron or steel per yard used in main and side track, what joints or chairs are used in track, the kind of ballasting of road, quality of building or structure on railroad track, the length of time iron (or steel) in track has been used, and the length of time the road has been built, all belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, and hereby scheduled and returned, as required of railroad companies, according to par. 3 of section 85 of tax law 1891.

State number of ties in track per mile. 3,000 in main, and 2,640 in side.
State length of time road has been built. 39 years.
State number miles of track laid with steel rail. 79.90.
State number miles of track laid with iron rail. None.
State number miles of siding laid with steel rail. 47.33.
State number miles of siding laid with iron rail. 50.52.
State weight of iron and steel rail used in main track and sidings. Main track, 70 and 60 lbs.; siding, 56 and 60 lbs.
State kind of "joints" or "chairs" used. Angle bars.
State proportion of ballast used on road. Rock, ——; gravel, 79.90; dirt, ——; other material, ——.

SCHEDULE No. 4,

Showing the amount of capital stock authorized and the number of shares into which such capital stock is divided, the amount of capital stock paid up, the market value or actual value of the shares of said stock, the total indebtedness, except for current expenses for operating the road, and the total listed valuation of all tangible property in this State belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on the 1st day of April, 1891, as required of railroad companies according to par. 4 of section 85, tax law 1891.

Amount of capital stock authorized	$1,988,150 00
Number of shares	39,763 00
Amount of capital stock paid up	1,988,150 00
Market value of stock per share	47 50
Actual value of stock per share	47 50

Indebtedness.

Amount of 1st-mortgage bonds	$1,600,000 00
Amount of 2d-mortgage bonds	600,000 00
Amount of — mortgage bonds	
Amount of — mortgage bonds	
Total indebtedness, not including current expense for operating road	3,137,250 13
Current expense for operating road	229,807 56
Total listed valuation of all tangible property in this State	

Earnings.

Gross earnings of entire road, as shown by last official report of company	$1,213,619 54
Net earnings of entire road, as shown by last official report of company	379,762 09
Gross earnings of miles of road within this State, as shown by last official report	1,213,619 54
Net earnings of miles of road within this State, as shown by last official report	379,762 09
Average annual net earnings per mile over entire line, as shown by last official report	4,752 96
Average annual gross earnings per mile over entire line, as shown by last official report	15,284 88

NOTE.—It is of great importance that this schedule should be filled out as near as possible. Incomplete statements will be returned for completion.

J. O. HENDERSON,
Auditor of State.

296 SCHEDULE

Number, Description, and Value of Station-houses, Depots, Machine Shops, Water
pany, Situated upon the "Right of Way"

County.	Township.	Descri Name of station.
☞ (Arrange counties in alphabetical order.)		
Clay	Van Buren	Harmony
		Knightsville
	Brazil	Brazil
	Posey	Staunton
		Cloverdale
	Sugar Ridge	Ashborough
Hendricks	Guilford	Plainfield
	Liberty	Cartersburg
		Clayton
		Summit
	Clay	Amo
		Coatsville
297 Marion		Indianapolis

No. 5.

Tanks, Other Buildings, Belonging to the Terre Haute and Indianapolis Railroad Com- of said Road in — County, Indiana.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Depot	16 x 45	Frame	23 years	200 00
Freight-house	20 x 50	"	23 "	125 00
Section "	16 x 24	"	11 "	125 00
Hand-car "	10 x 16	"	30 "	15 00
Depot	20 x 40	"	17 "	350 00
Coal-house	12 x 16	"	1 "	25 00
Depot	20 x 74	Brick	23 "	450 00
Baggage-room	18 x 20	Frame	13 "	75 00
Freight-house	24 x 50	"	17 "	125 00
Car & coal "	24 x 50	"	27 "	100 00
Water tank	24 x 34	"	18 "	175 00
Engine-room	34 x 124	"	19 "	185 00
3 watch-houses	6 x 8	"	7 "	15 00
Depot	20 x 38	"	30 "	75 00
Hand-car house	10 x 16	"	30 "	10 00
Passenger shed	12 x 18	"	3 "	15 00
Depot	14 x 20	"	4 "	75 00
Hand-car house	10 x 16	"	30 "	14 00
Total Clay county				2,144 00
Depot	16 x 45	Frame	23 years	100 00
Freight-h ouse	20 x 50	"	37 "	50 00
Watch-house	7 x 12	"	19 "	4 00
Water tank	20 ft. dia.	"	3 "	75 00
Freight-house	14 x 20	"	28 "	25 00
Depot	16 x 32	"	23 "	75 00
Section-house	16 x 32	"	26 "	75 00
Hand-car "	10 x 16	"	29 "	10 00
" "	10 x 16	"	29 "	10 00
Section "	16 x 38	"	27 "	75 00
Depot	16 x 45	"	23 "	100 00
Watch-house	8 x 12	"	8 "	5 00
Pump-house	12 x 16	"	8 "	30 00
Water tank	16 x 16	"	13 "	70 00
Depot	16 x 45	"	21 "	100 00
Hand-car house	14 x 20	"	27 "	20 00
Depot	19 x 52	Brick	9 "	600 00
Coal-house				15 00
Total Hendricks county				1,439 00
Inspector's house	8 x 10	Frame	2 years	8 00
Office	44 x 62	Brick	25 "	3,500 00
Freight-house	62 x 355	"	25 "	
2 watch-houses	7 x 7	Frame	8 "	12 00
Yard office		"	New	800 00
Oil-house	12 x 20	"	7 years	30 00
Water tank	20 ft. dia.	"	1 "	75 00
Carpenter shop	24 x 112	"	21 "	50 00
Wood-shed	24 x 112	"	21 "	50 00
Coal "	24 x 96	"	21 "	30 00

Schedule No.

County.	Township.	Descri Name of station.
	Center	White River
		W. Indianapolis
	Wayne	Eagle Creek
		Bridgeport
Putnam	Marion	Fillmore
	Greencastle	Greencastle
	Washington	Junction
		Reelsville
298 Vigo	Lost Creek	Sulyville
	Harrison	Glendale
		Terre Haute

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Sand-house	16 x 24	Frame	21 years	20 00
Blacksmith shop	30 x 122	Brick	18 "	425 00
Engine-house	185 ft. dia.	"	20 "	2,750 00
Pump "	15 x 15	"	20 "	60 00
Car & tool house	14 x 20	Frame	6 "	40 00
Switch-house	8 x 8	"	2 "	8 00
Yard office	16 x 32	"	13 "	75 00
Watch-house	7 x 7	"	1 "	7 00
"	7 x 12	"	19 "	4 00
Depot	16 x 32	"	23 "	70 00
Hand-car house	14 x 20	"	27 "	7 00
Section "	16 x 50	"	26 "	75 00
Total Marion county				8,096 00
Hand-car house	14 x 20	Frame	28 years	20 00
Depot	14 x 20	"	20 "	75 00
Coal-house	12 x 15	"	1 "	15 00
Hand-car house	10 x 16	"	30 "	10 00
Coal-shed	18 x 70	"	23 "	70 00
Carpenter shop	24 x 32	"	23 "	50 00
Water tank	24 ft. dia.	"	8 "	100 00
"	20 "	"	3 "	75 00
Depot	$20\frac{1}{2}$ x $52\frac{1}{2}$ L's 14 x 15	"	4 "	750 00
Coal-house	12 x 16	"	4 "	10 00
Hand-car house	12 x 16	"	4 "	10 00
Dwelling-house		"		550 00
Depot	22 x 46 x 110	"	23 "	175 00
"	16 x 32	"	23 "	100 00
Pump-house	22 x 24	"	15 "	50 00
2 water tanks	16 ft. dia.	"	14 "	100 00
Hand-car house	10 x 16	"	30 "	4 00
Total Putnam county				2,164 00
Depot	16 x 40	Frame	3 years	275 00
Section-house	16 x 36	"	22 "	100 00
Hand-car "	14 x 20	"	22 "	15 00
Passenger shed	10 x 18	"	8 "	40 00
East yard office	14 x 20	"	4 "	75 00
Check "	8 x 9	"	4 "	10 00
Coach-house	56 x 360	Brick	22 "	2,250 00
Paint shop	56 x 150	"	23 "	1,100 00
Coach "	35 x 160	Frame	27 "	475 00
Repair "	75 x 150	Brick	24 "	2,750 00
Car "	28 x 135	Frame	18 "	175 00
Dry-house	17 x 35	Brick	27 "	175 00
Office	28 x 28	"	12 "	325 00
Carpenter shop	60 x 210	"	22 "	3,400 00
Blacksmith "	84 x 124	"	22 "	1,400 00
Coal-shed	24 x 186	Frame	19 "	125 00
Wood "	24 x 160	"	24 "	75 00
Boiler shop	90 x 96	Brick	24 "	1,000 00
Machine shop	100 x 168	"	22 "	2,200 00
Engine-repair shop	54 x 120	"	23 "	1,500 00
Storehouse & office	36 x 120	"	22 "	1,400 00

Schedule No.

County.	Township.	Descri Name of station.

299 [Endorsed:] Return of Terre Haute and Indianapolis Railroad Company. April 1, 1891. Received June 19th, 1891. J. O. Henderson, auditor of state.

STATE OF INDIANA, } ss:
Vigo County, }

John G. Williams, *general manager, and George E. Farrington, secretary, of the Terre Haute and Indianapolis Railroad Company, being duly sworn, on oath say that the foregoing schedules, respectively numbered one (1), two (2), three (3), four (4), and five (5), contain and are full, true, and correct statements and schedules of the property of the said railroad company, which are required to be returned to the auditor of state under provisions of section 85 of tax law 1891.

JOHN G. WILLIAMS,
*Gen'l Manager.**
GEO. E. FARRINGTON, *Sec'y.*

Subscribed and sworn to before me this 17th day of June, 1891.
†HORACE M. SMITH,
Notary Public.

* General superintendent or general manager.
† May be sworn to before a notary public, justice of the peace, or any officer authorized to administer oaths.

5—Continued.

ption of all kinds of buildings on "right of way."

For what use.	Dimensions.	Kind.	Age.	True cash value.
Engine-house	260 ft. dia.	Brick	21 years	5,000 00
Depot	60 x 60 60 x 80	" "	27 " 27 "	2,500 00
Baggage-room	20 x 70 14 x 20	Frame Frame	24 " 24 "	75 00
Mail-room	14 x 20	"	4 "	50 00
Ice-house	16 x 24	"	4 "	20 00
Freight-house	64 x 380	Brick	34 "	3,250 00
Office	54 x 78	"	34 "	
Switch-house	9 x 12	Frame		7 00
Line-repair office	18 x 24	"	4 "	25 00
Oil-room	24 x 24	"	19 "	175 00
Tool-house	8 x 9	"	" "	7 00
Hand-car house	14 x 20	"	27 "	10 00
2 street watch-houses	8 x 8	"	2 "	14 00
4 " "	7 x 7	"	3 to 8 "	20 00
6 " "	8 x 9	"	17 "	30 00
1 bridge watch-house		"	" "	5 00
Tool-house	14 x 20	"	26 "	10 00
Total Vigo county				30,063 00

NOTICE.—The foregoing schedule should be filled out in full as near as possible.

J. O. HENDERSON,
Auditor of State.

STATE OF INDIANA:

OFFICE OF AUDITOR OF STATE.

I, J. O. Henderson, auditor of state of the State of Indiana, do hereby certify that the foregoing is a full, true, and complete copy of the annual return of the Terre Haute and Indianapolis Railroad Company to the auditor of state, as required by section 85 of the tax law of 1891, for the year 1891 as the same appears from the original of said return now on file in my office and of which I am the legal custodian.

Witness my hand and official seal this 18th day of November, 1892.

J. O. HENDERSON,
Auditor of State.

300 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegations of the complaint.

301 And thereupon the court sustained said objection and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

302 And thereupon the plaintiff, by its counsel, offered in evidence the following portions of the printed official report of the State board of tax commissioners for the year 1891 (it being agreed in open court that the said printed report is the true official report of the proceedings of said board, and that the following is a true copy of said extracts, and that such copy shall be considered as in lieu of the original extracts from said original printed official report, and that the following extracts are all the portions of said report which contain the assessment and valuation of the "railroad track" belonging to or controlled by the Terre Haute and Indianapolis Railroad Company on April first, 1891, and of the "rolling stock" belonging to or hired, leased, used, or operated by said corporation on April first, 1891), to wit:

(From pages 188, 190, 196, 201, 206, and 211 of said report.)

TABLE No. 4.

Table of Railroads in Indiana by Counties and Value of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way Assessed by the State Board of Tax Commissioners, 1891.

Names of counties and railroads in each.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total of road.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.		
Clay county:														
Terre Haute & Indianapolis	13.81	$21,800	$301,058				49.52	$3,500	$173,320	13.81	$9,800	$135,338	$3,465	$613,181
Hendricks county:														
Terre Haute & Indianapolis	19.65	21,800	428,370				3.51	3,500	12,285	19.65	9,800	192,570	1,445	634,670
Marion county:														
Terre Haute & Indianapolis	9.17	21,800	199,906				15.61	3,500	54,635	9.17	9,800	89,866	15,862	360,269
Putnam county:														
Terre Haute & Indianapolis	21.13	21,800	460,634				7.18	3,500	25,130	21.13	9,800	207,074	2,170	695,008
Vigo county:														
Terre Haute & Indianapolis	16.14	21,800	351,852				22.01	3,500	77,035	16.14	9,800	158,172	30,070	617,129

(From pages 184 and 186 of said report.)

TABLE No. 3.

Table of Main Track, Second Main Track, Side Track, Rolling Stock, and Improvements on Right of Way of Railroads in Indiana for the Year 1891, *as Valued and Equalized by the State Board of Tax Commissioners.*

Names of railroads.	Main track.			Second main.			Side track.			Rolling stock.			Improvements on right of way.	Total assessment.	Averge value per mile.
	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.	Miles.	Per mile.	Total.			
Terre Haute & Indianapolis	79.90	$21,800	$1,741,820				97.83	$3,500	$342,405	79.90	$9,800	$783,020	$53,012	$2,920,257	$36,549

304 To the introduction of which evidence the defendant objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegations of the complaint.

305 And thereupon the court sustained said objection and refused to admit said proposed evidence; to which ruling of the court in sustaining said objection and refusing to admit said proposed evidence the plaintiff, by its counsel, at the time excepted.

306 And thereupon it was agreed in open court between the parties hereto that it is a fact that prior to the commencement of this action the plaintiff paid or tendered to the proper officers of the counties, cities, and towns through or into which the lines of plaintiff extended on April first, 1891, all taxes assessed against plaintiff for the year 1891 in said counties, cities, towns, and townships other than those assessed against the property of plaintiff denominated by the statute "railroad track" and "rolling stock."

And thereupon it was further agreed in open court between the parties hereto that it is a fact that the amounts stated in the complaint to have been paid or tendered by the plaintiff to the said several county, city, and town treasurers and tax collectors made defendants herein as the amounts claimed by the plaintiff to have been justly and equitably due and payable from it for taxes for the entire year 1891 upon the "railroad track" and "rolling stock" of plaintiff in the several counties, cities, towns, and townships through or into which the lines of plaintiff extended were paid and tendered as alleged in the complaint herein.

307 L. L. GILBERT, being duly sworn, on his oath testified as follows:

"I am and for two years and more last past have been assistant to the general counsel of the plaintiff corporation, and as such assistant it has been my duty to have and I have had charge of the payment of taxes against plaintiff's property in Indiana and other States."

And thereupon plaintiff, by its counsel, propounded to the witness the following question:

Q. "State upon what valuations of plaintiff's 'railroad track' and 'rolling stock' the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned."

308 To the introduction of which evidence the defendant objected for the reason that the same is irrevelant and immaterial and does not tend to sustain the allegations of the complaint.

309 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

310 And thereupon counsel for plaintiff stated that they offered to prove by the witness, in answer to the question, that the valuations of the plaintiff's "railroad track" and "rolling stock," upon

which the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned, were the valuations of the "railroad track" and "rolling stock" belonging to the corporations which were consolidated into the plaintiff corporation on April first, 1890, as made and fixed by the State board of equalization of 1890 and distributed by the proper officers to the respective counties, cities, and towns through or into which the lines of said corporations extended and of which the defendants are respectively treasurers and tax-collectors and as extended on the proper tax duplicates for 1890.

311 To the admission of which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which proposed testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

312 And thereupon the plaintiff, by its counsel, propounded to the witness the following question:

Q. "State upon what rates of tax levies the amounts paid and tendered to the defendants by the plaintiff corporation as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes upon its 'railroad track' and 'rolling stock' for the year 1891 were reckoned."

313 To the introduction of which evidence the defendant- objected for the reason that the same is irrelevant and immaterial and does not tend to sustain the allegations of the complaint.

314 And thereupon the court sustained said objection; to which ruling of the court in sustaining said objection the plaintiff, by its counsel, at the time excepted.

315 And thereupon counsel for plaintiff stated that they proposed to prove by the witness, in answer to the question, that the rates of tax levies upon which the amounts paid and tendered by the plaintiff corporation to the defendants herein as the amounts claimed by the plaintiff to have been justly due and payable from it as taxes for the year 1891 were reckoned were the rates of tax levies as made and fixed by the proper authorities of the respective counties, townships, cities, and towns of which the defendants are respectively treasurers or tax collectors for the year 1891.

316 To the admission of which proposed testimony the defendants, by their counsel, objected on the same grounds as to the question in answer to which proposed testimony was offered.

And thereupon the court sustained said objection and refused to admit said proposed testimony; to which ruling of the court in sustaining said objection and refusing to admit said proposed testimony the plaintiff, by its counsel, at the time excepted.

317 And thereupon it was agreed between the parties hereto in open court that it is a fact that the amounts so tendered as aforesaid were tendered in lawful money of the United States,

made legal tender by the laws of the United States, and that the amounts so tendered to and refused by said defendants named in the complaint as having refused the amounts therein specified were by the plaintiff at the time of bringing this action brought into court and deposited in the registry of the court, and that the tenders so made by the plaintiff were kept good by the payment into court of said sums so tendered as aforesaid.

And thereupon it was agreed between the parties hereto in open court that it is a fact that prior to the commencement of this action the taxes, based on the valuations of the State board of tax commissioners, against the plaintiff for the year 1891 upon its "railroad track" and "rolling stock" were upon the respective tax duplicates in the hands of the respective county, city, town, and township treasurers and tax collectors made defendants herein, and that all and each of said officers and their collectors and deputies were, prior to the commencement of this suit, and still are threatening to collect the taxes assessed against plaintiff upon its "railroad track" and "rolling stock" for the year 1891, as distributed by the proper officers to the counties, cities, towns, and townships of which the defendants are respectively county, city, town, and township treasurers and tax collectors, except the amounts paid as aforesaid by the plaintiff by proceedings under the statutes of the State relating to the collection of taxes.

318 And thereupon the defendants, to sustain the issues on their part, introduced the Honorable CLAUDE MATTHEWS as a witness and asked said witness the following question:

"Q. In assessing plaintiff's property, what, if any, assessment did you make except upon the railroad track and rolling stock of plaintiff situate within the State of Indiana?"

To which question the plaintiff, by its counsel, objected upon the following grounds, to wit:

1. That said question is incompetent and illegal because it is an attempt to get from the witness a legal construction of the words used by the State board of tax commissioners in their certificate appended to their official annual report for the year 1891.

2. Because said question asks from the witness a legal construction of the certificate of the said State board of tax commissioners to their official report for the year 1891.

3. Because said question, if answered that they made none, would, in effect, make the witness contradict the words used by said State board of tax commissioners in their said certificate to their official report for the year 1891.

Which objection was overruled by the court; to which ruling of the court the plaintiff then and there at the proper time excepted, and thereupon the witness answered the question as follows:

319 "A. We made none whatever."

And thereupon the defendants, by their counsel, propounded to the witness the following question:

"Q. In assessing property within the State of Indiana did you assess any property of value outside of the State?"

To which question the plaintiff, by its counsel, at the time objected upon the following grounds:

1. That said question is incompetent and illegal, because it is an attempt to get from the witness a legal construction of the words used by the State board of tax commissioners in their certificate appended to their official annual report for the year 1891.

2. Because said question asks from the witness a legal construction of the certificate of the said State board of tax commissioners to their official report for the year 1891.

3. Because said question, if answered that they did not, would in effect make the witness contradict the words used by the State board of tax commissioners in their said certificate to their official report for the year 1891.

Which objection was overruled by the court; to which ruling of the court the plaintiff then and there at the proper time excepted, and thereupon the witness answered the question as follows:

"A. We did not."

320 And this was all the evidence given in the cause.

And the plaintiff now tenders this its bill of exceptions on this 8th day of December, 1892, being within the time limited for the filing of the same, and prays that the same may be signed, sealed, and made a part of the record, which is done this 8th day of December, 1892.

EDGAR A. BROWN, *Judge.*

321 And afterwards, to wit, on the 10th day of December, 1892, being the 30th judicial day of the November term, 1892, of said court, before the same honorable judge, the following proceedings were had herein:

"Within the time limited by the court comes the plaintiff, by its attorneys, and files and submits to the court for approval its appeal bond in this cause, and the court now approves said appeal bond and the sureties thereon, said appeal bond being in the words and figures following, to wit:

Know all men by these presents that we, "The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company," Samuel O. Pickens, and Otto N. Frenzel, are held and firmly bound unto Victor M. Backus *et al.* in the penal sum of one thousand dollars; to the payment of which, well and truly to be made and done, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 10 day of December, 1892.

The condition of the above obligation is such that whereas heretofore, to wit, on the 2nd day of December, 1892, the said Victor M. Backus, in the Marion circuit court, recovered a judgement against the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company for the sum of —— dollars, cost of suit, etc.; from which said judgment of said Marion circuit court the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company appeals to the supreme court of Indiana:

Now, if the said "The Pittsburgh, Cincinnati, Chicago and St.

Louis Railway Company" shall and will duly prosecute said appeal and abide by and pay the judgment and costs which may be rendered or affirmed against it, then the above obligation to be null and void; otherwise to be and remain in full force and virtue in law.

PITTSBURGH, CINCINNATI AND
ST. LOUIS RAILWAY COMPANY. [SEAL.]
SAMUEL O. PICKENS. [SEAL.]
OTTO N. FRENZEL. [SEAL.]

Approved Dec'r 10, 1892.

EDGAR A. BROWN, *Judge.*

322 STATE OF INDIANA, } ss:
County of Marion, }

I, John R. Wilson, clerk of the circuit court within and for the county aforesaid, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the entries of proceedings had and of all the papers filed in said court belonging on appeal to this cause, No. 6215, as appear from the records and files of said court now in my custody and keeping.

In testimony whereof I hereunto subscribe my name and affix the seal of said circuit court, at my office, in the city of Indianapolis, the 12th day of December, 1892.

[SEAL.] JOHN R. WILSON, *Clerk.*

323 In the Supreme Court.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Appellant,

vs.

VICTOR M. BACKUS, J. B. BREWER, THOMAS MCCAY, SIMEON S. Bosserman, Allen W. Reynolds, Andrew O. Castleman, Joseph D. Vurpillar, Charles L. Woll, E. B. Thomas, George W. Hoffman, H. F. Small, Hiram A. B. Moorhous, George Burkit, Daniel Boshour, E. B. Dibbell, J. R. Casti, Marcus H. Hemphill, G. B. Clark, Samuel A. Martindale, Amos A. Covalt, W. A. Markland, James K. Armstrong, A. F. Swoveland, William C. Barnard, Thomas E. Valentine, Frank McCollough, William Dark, William J. May, A. L. Bateman, Richard Carter, William Wiseman, Frank Brodhicker, E. Hahlbrand, Hugh Colvin, John A. Jenkins, W. B. Veasey, Levi H. Scott, Jacob Best, Daniel Demaree, L. M. Robinson, Charles B. Curtis, A. E. Rust, D. Reeder, Jacob H. Thomas, Robert Montgomery, Thomas A. Jones, Paul Kerr, William M. Young, William P. Cook, Martin L. Stratton, M. C. Jay, John Hayes, I. W. St. John, George W. Veal, William N. McCullough, John G. Grahs, Albert W. Saint, John R. Page, William A. Fulton, Azro H. Wilkinson, C. E. Hiatt, Joseph H. Parker, M. McCrae, John P. McGeath, Appellees.

Assignment of Errors.

1. The court below erred in overruling appellant's motion for a new trial.

2. The court below erred in rendering judgment and decree against appellant and in favor of appellees.

BUTLER, SNOW & BUTLER,
Attorneys for Appellant.

S. O. PICKENS,
S. STANSIFER,
J. L. RUPE,
Of Counsel.

324 And afterwards, to wit, on the 28th day of December, 1892, said day being the 27th judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the parties, by their attorneys, and appellant moves the court for a temporary injunction herein, and presents and files its undertaking in due form, duly executed by the appellant as principal and J. T. Brooks, J. L. Bradley, and J. P. Frenzel as sureties thereon, which undertaking is approved by the court, said undertaking being in the words and figures following, to wit:

325 THE STATE OF INDIANA:

In the Supreme Court.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS *et al.*, Appellees.
} No. 16799.

We undertake that the plaintiff in the above-entitled cause shall pay to the defendants all damages and costs which may accrue to them by reason of the injunction in this action.

Witness our hands this 19th day of December, A. D. 1892.

PITTSBURGH, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By JNO. E. DAVIDSON, *Fourth Vice-President.*
J. T. BROOKS.
J. L. BRADLEY.
J. P. FRENZEL.

Attest:
[SEAL.] S. B. LIGGETT, *Secretary.*

Approved by me this — day of December, 1892.

——.

326 STATE OF PENNSYLVANIA, *County of Allegheny,* } *ss:*

Before me, the undersigned authority in and for said county and State, personally appeared John E. Davidson, vice-president of the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, who acknowledged that he had executed the accompanying undertaking in the suit of The Pittsburgh, Cincinnati, Chicago & St. Louis Rail-

way Company, appellant, *vs.* Victor M. Backus and others, appellees, No. 16799, in the supreme court of Indiana, for and in behalf of said company, and that the same is the voluntary act and deed of said John E. Davidson, vice-president, for and in behalf of said The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company.

Witness my hand and notarial seal this 21st day of December, A. D. 1892.

M. H. SHANE,
[SEAL.] *Notary Public.*

327 And the court, being fully advised in the premises, finds that a temporary injunction should be granted until the further order of this court.

It is therefore considered, ordered, and adjudged by the court that the appellees and each of them be, and they are hereby, restrained and enjoined from any and all attempts and efforts to levy and collect of and from the appellant or its property the taxes or any part thereof described in the complaint in said cause until further order of this court, subject to the right of the appellees upon two days' notice to the appellants to move the court for a dissolution of said injunction.

And it is further, upon the agreement of the parties, ordered that this cause be, and is hereby, advanced and set down for hearing on the twelfth day of January, 1893, subject to change upon the further order of the court as to the time of such hearing, and if the said hearing cannot be had on the said twelfth day of January it shall be had as soon thereafter as practicable.

328 And afterwards, to wit, on the 30th day of December, A. D. 1892, said day being the 29 day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files points and authorities for oral argument in words and figures following. (Here insert.)

And afterwards, to wit, on the 3rd day of January, A. D. 1893, said day being the 32 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files points and authorities for oral argument and briefs in behalf of appellant in the words and figures following. (Here insert.)

And afterwards, to wit, on the 13th day of January, A. D. 1893, said day being the 41st judicial day of the November, 1892, term of said supreme court, the following furtcer pleas and proceedings in said cause were had, to wit:

Come now the appellees, by their counsel, Claypool & Claypool, and by Alonzo G. Smith, attorney general; John W. Kern, Albert J. Beveridge, and William A. Ketcham, for the State of Indiana,

and enter their appearance in behalf of the appellees in said cause, and file points and authorities for oral argument and briefs in behalf of appellees in the words and figures following. (Here insert.)

329 And afterwards, on the 14th day of January, A. D. 1893, the same being the — judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the parties, by their counsel, and this cause is submitted to the court for judgment and decree, as provided by the act of the General Assembly of the State of Indiana, approved April 13th, 1885, and the rules of said supreme court adopted September 23rd, 1885, in relation thereto.

And afterwards, to wit, on the 18th day of January, A. D. 1893, said day being the 45 judicial day of the November, 1892, term of said supreme court, the following further pleas and proceedings in said cause were had, to wit:

Come now the appellees, by their counsel, and file points and authorities for oral argument in behalf of appellees, in the words and figures following. (Here insert.)

And afterwards, to wit, on the 21st day of January, A. D. 1893, said day being the 48 judicial day of the November, 1892, term of said court, the following further pleas and proceedings in said cause were had, to wit:

Comes now the appellant, by its counsel, and files its reply briefs in behalf of appellant in the words and figures following. (Here insert.)

330 And be it also remembered that on the 18th day of February, 1893, the same being the 72nd judicial day of the November term of said supreme court—present, Hon. Silas D. Coffey, chief justice; Hon. Walter Olds, Hon. James McCabe, Hon. Timothy E. Howard, Hon. Leonard J. Hackney, judges—the following proceedings were had in said cause:

Come the parties, by their attorneys, and the court, being fully advised in the premises, affirms the judgment of the court below with the following opinion pronounced by OLDS, *J.:*

331 This is a suit brought by the appellant against the appellees to enjoin the collection of taxes assessed against the appellant railway company by the State board of tax commissioners of Indiana.

The plaintiff is a corporation organized under the laws of Pennsylvania, West Virginia, Ohio, Indiana, and Illinois, and is and has been for several years engaged in the business of a common carrier of freight and passengers and in operating a system of railroads in the States of Pennsylvania, West Virginia, Ohio, Indiana, and Illinois, having various lines of railroads in Indiana, and its railroad track and rolling stock was assessed for taxation by the said State

board of tax commissioners under the act of the legislature of Indiana approved March 6th, 1891.

The principal question involved in this case relates to the constitutionality and validity of the law under which the appellant's property was assessed, but some other questions are presented by the record which we will consider later on.

The act makes provision for the assessment of real and personal property by township and county assessors, creates a county board of equalization in each county in the State, and section 114 gives to such county board "power to hear complaints of any owner of personal property except railroad tracks and rolling stock of railroads, to equalize the valuation of property and taxables," and provides that "it shall pass upon each valuation, and may, on sufficient cause being shown or on its own motion, correct the assessment or valuation of any property in such manner as will in its judgment make the valuation thereof just and equal," and provides that "appeals shall lie from the decision of any county board of review to the State board of tax commissioners, which shall hear and determine the same in such manner as it may by its rules prescribe, and certify its decision, which shall be final, to the proper county auditor."

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In relation to the assessment of railway property the act provides:

"SEC. 77. Between the first day of April and the first day of June of the year eighteen ninety-one, and at the same time in each year thereafter, when required by the county auditor, any person, company or corporation so owning, managing, operating or constructing a railroad shall make and file with the county auditor of the respective counties in which the railroad may be located, a statement, or schedule, verified by the oath of such person, or the president and secretary of such corporation, showing the property held for right of way, and the length of the main and all side or second tracks and terminals in such county, and in each city or town through or into which the road may run, and describe such tract of land other than a city or town lot through which the road may run, in accordance with the United States or other surveys, giving the width and length of the strip of land held in each tract and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statements in April next after the location of their roads. When such statement shall have been once made, it shall not be necessary to repeat the description as hereinbefore required, unless directed so to do by the county auditor; but the company shall during the month of April, annually report the value of such property, by the description set forth in the next section of this act, and note all additions or changes in such right of way as shall have occurred.

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"SEC. 78. Such right of way, including the superstructures, main, side or second track and terminals, turn-table-, telegraph poles, wires, instruments and other appliances and stations and improvements of the railroad company on such right of way, (excepting

machinery, stationary engines and other fixtures which shall be considered personal property,) shall be held to be real estate for the purpose of taxation, and denominated 'railroad track' and shall be so listed and valued," &c.

334 Sec. 79 declares that the railroad track shall be listed and taxed in the several counties, &c.

Sec. 80 declares that "the movable property belonging to a railroad company shall be held to be personal property and denominated for the purpose of taxation 'rolling stock'; such rolling stock shall be listed and taxed in the several counties, townships, cities and towns in the proportion that the main track used or operated in such county, township, city or town bears to the length of the main track used or operated by such person, company or corporation, whether owned, operated or leased by him or them in whole or in part."

Sec. 81 provides for the taxation of tools, materials for repairs, &c., in the county, township, city, or town where the same may be on the 1st day of April of each year, and sec. 82 provides for the taxation of all real estate of any railroad other than that denominated railroad track and improvements thereon as lands and lots in the county, city, or town where situated.

Sec. 83 declares that between the first day of April and the first day of June of each year "every person, company or corporation owning, constructing or operating a railroad in this State

335 shall return to the county auditor a list or schedule, verified by the oath of such person so owning, constructing or operating. If an individual, or if a company or corporation, by the oath of the superintendent or secretary of such company or corporation, which shall contain, first, a full and correct detailed inventory of all the rolling stock belonging to or leased, hired, used or operated by such company, and which shall distinctly set forth the number of locomotives and tenders of all classes, passenger cars of all classes, sleeping, chair and dining cars, express cars, wrecking cars, freight cars, flat cars, pay cars, hand cars, tank or oil cars, and all other kind of cars, and the true cash value thereof on the first day of April of the current year shall be set opposite each of them. Such list or schedule shall also set forth the number of miles of main track on which such rolling stock is used in the State of Indiana. For the purpose of taxation such rolling stock leased or hired from persons or corporations other than the railroad companies, shall be deemed the property of the railroad company leasing the same, and for that purpose shall be valued at such proportion of the full value thereof as the time during which the same is used on such railroad during the year bears to the whole year."

Second. Such list shall also contain a full and correct inventory of all other personal property of such railroad company not specifically taxed, including tools, etc. where the same may be on the first day of April.

336 The third subdivision provides for an inventory of real estate other than that denominated "railroad track."

Sec. 84 makes it the duty of county auditors to return to the proper assessors a copy of the lists as contained in the second and third specifications to be assessed by such assessors, the same to be treated in all respects in regard to assessments and equalization as other similar property belonging to individuals. Section 85 reads as follows:

"At the same time that the lists or schedules as hereinbefore required to be returned to the county auditor, the person, company or corporation running, operating or constructing any railroad in this State shall, under the oath of such person, or the secretary or superintendent of such company or corporation, return to the auditor of state sworn statements or schedules, first, of the property denominated 'railroad track,' giving the length of the main and side or second tracks and turnouts, and showing the proportions in each county and township and the total in the State. Second, the rolling stock, whether owned or hired, giving the length of the main track in each county and the entire length of the road in this State. Third, showing the number of ties in track per mile, the weight of iron or steel per yard used in the main and side tracks, what joints or chains are used in the track, the ballasting of road, whether graveled, stone or dirt, the number and quality of buildings or other structures on railroad tracks, the length of time iron or steel in track has been used and the length of time the
337 road has been built. Fourth, a statement or schedule showing, 1st, the amount of capital stock authorized, and the number of shares into which such capital stock is divided. 2nd. The amount of capital stock paid up. 3rd. The market value, or if no market value, then the actual value of the shares of stock. 4th. The total amounts of all indebtedness except for current expenses for operating the road. 5th. The total listed valuation of all its tangible property in this State. Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of state."

Sec. 86 subjects the persons, companies, and corporations to a penalty for failure to file such reports.

Sec. 87 reads as follows: "The auditor of state shall annually, on the meeting of the State board of tax commissioners, lay before said board the statements and schedules herein required to be returned to him, and said board shall assess such property in the manner hereinafter provided."

Sec. 117 creates the State board of tax commissioners. It provided that "immediately upon the taking effect of this act the governor shall appoint two skilled and competent persons, not more than one of whom shall be of the same political party, who, together with the secretary of state; auditor of state, and governor, the last three of whom shall *ex officio* be members and the governor chairman thereof, shall constitute and be a board to be denomi-
338 nated the State board of tax commissioners, who shall perform the duties and have the powers hereinafter specified.

Sec. 118 requires the governor to commission the persons so appointed and that they shall each give bond with sureties in the sum

of $10,000, and sec. 119 fixes the term of office of such commissioner. Of the members first appointed one shall hold for two and the other for four years, and thereafter they shall hold their offices for four years.

Sec. 120 and some of the sections next following prescribes the duties and powers of the board. The ninth subdivision of section 120 authorizes the board "to make such rules and regulations as the board shall deem proper to effectually carry out the purposes for which the board is constituted and to make all necessary rules and regulations not inconsistent with law as the board may deem necessary with respect to its own meetings and procedure."

Sec. 129 fixes the time and place of the meeting of such State board at the office of the auditor of state on the first Monday of August — each year "for the purpose of assessing railroad property and equalizing the assessment of real estate as provided in this act," and this section further provides that "the State board of tax commissioners is hereby given all the powers given to county boards of review."

Two of the principal reasons on which it is contended this act is void are, first, that it denies due process of law to railway corporations touching the assessment and valuation of their prop-
339 erty denominated by the act "railroad track" and "rolling stock," and is therefore repugnent to and in conflict with sec. 1, art. 14, of the Constitution of the United States, declaring, "Nor shall any State deprive any person of life, liberty, or property without due process of law," and sec. 12, art. 1, of the constitution of Indiana, providing that "every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law;" second, that the act is void for the reason that it denies to railway companies the equal protection of the laws granted to all other persons against erroneous, unjust, and illegal assessments of the value of property upon which taxes are assessed to be levied, in that it grants to all persons the right or privilege to be heard before some tribunal authorized to correct errors or give appropriate relief concerning the correctness or equality of assessment or inequalities in the same or mistakes of facts or law or illegal conduct of those charged with the duty of making the same after the original assessments have been made and before they become final and conclusive as a protection against burdens imposed by such mistakes and errors; but as to railway companies the act utterly denies all protection whatever against the same boards against which others are protected, and therefore the act is in conflict with that part of the fourteenth amendment of the Constitution of the United States which provides that "no State shall deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, art. 14, U. S. Constitution.

340 We will consider these two objections to the validity of the statue in the inverse order from which they are stated. It is contended that railway companies are persons within the meaning of these provisions of the Constitution, and this contention must be decided to be correct.

To determine whether or not railway companies are denied equal protection of the laws given by the act to all other persons we must first interpret the law and see what rights and privileges are given to them and to others and what burdens are likewise imposed on each and see whether the rights given to and burdens imposed upon others differ from those given to and imposed upon railway companies, for if no real discrepency within the meaning of the Constitution in fact exists between the rights of railway companies and other persons, then the objection that the railway companies are denied equal protection of the law must fail. The fact that a wrong was committed in the execution of the law or that an error was committed and not corrected is no objection to the validity of the law.

As to property other than that denominated by the law as rail-"road track and rolling stock," including all property, real and personal, of individuals, the law provides for its assessment by assessors and it creates county boards of review in the several counties of the State, and by section 114, from which we have hereinbefore quoted, it is provided that such county boards "shall pass upon each valuation, and may, on sufficient cause being shown or on its own motion, correct the assessment or valuation of any prop-
341 erty in such manner as will in its judgment make the valuation thereof just and equal." This section, while it may not give to county boards the right to change individual assessments of parties not legally before the board, evidently contemplates and gives the right to parties whose property has been wrongfully or erroneously assessed the right to voluntarily appear before such county boards and show that the assessment made against any property is erroneous and have it corrected, and it vests in such county boards the power, on such showing being made or on their own motion, to make correction and change the valuation, and from a decision made against a party who is before such county board it gives an appeal to the State board of tax commissioners, whose decision upon the question shall be final.

By section 129 of the statute, from which we have heretofore quoted, this same right to be heard given to all property-owners and the power vested in the county boards of review to correct and change assessments by section 114 is engrafted into and made a part of the law governing the proceedings before the State board as to valuation and assessments over which State board has jurisdiction and control, for by section 129, *supra*, it is declared that the State board is hereby given all the powers given to county boards of review. The right of parties who voluntarily appear to be heard and the right of the county boards to hear showings made by such parties as to assessments and to correct and change assessments and valuations are a part of the powers vested in the county boards,
342 and such power is transferred and vested in the State board, so that if there is any power in the county boards to hear grievances and make corrections in relation to property and assessments over which they have jurisdiction, then the State board has the same power in relation to property and assessments over which

it has jurisdiction. Counsel claim and argue that this right of hearing and to make corrections exists before the county boards, and we think it does, but they insist that this right does not exist before the State board, but with this latter contention we cannot agree, for certainly by the words of the statute we have quoted the same power in this respect is vested in the State board as is vested in county boards in relation to property and assessments over which it has jurisdiction, and if the State board has jurisdiction over the property and assessments of railway companies denominated "railroad track" and "rolling stock," then railway companies have the right to be heard and the State board has the right to correct any assessment and valuation made by it in relation to such property. That the State board has such jurisdiction and right we think there can be no doubt. By section 87 it is made the duty of the State board to assess such property in the manner afterwards in the act provided. Section 129 provides, among other things, for the meeting of the State board and fixes the time and place of meeting for the purpose, as stated, "of assessing railroad property."

343 By the 9th subdivision of section 120 it is made the duty of the State board to make such rules and regulations not inconsistent with law as it may deem necessary with respect to its meetings and procedure.

We think the interpretation we have placed upon the statute the fair and reasonable interpretation to be given to it.

It is well settled by the rules for the construction of statutes that in construing statutes the prime object is to ascertain and carry out the purpose and intent of the legislature; that in construing statutes courts will look to all parts of the same statute, to other statutes, and to the general principles of law and assign such meaning to the words of the statute construed as will make them effective.

Storm *vs.* Stevens, 104 Ind., 46.
C. & S. W. T. Co. *vs.* Fletcher, 104 Ind., 97.
Hunt *vs.* L. S. & M. S. R. Co., 112 Ind., 69.

In Lutz *vs.* The City of Crawfordsville, 109 Ind., 466, it is said: "If the legislature manifests an intention to create a system for the government of any subject, it is the duty of the court to effectuate that intention by such a construction as will make the system consistent in all parts and uniform in its operation."

Bishop on the Written Laws states the rule of the court in relation to statutes to be that "the court will presume the legislature intended its acts to be reasonable, constitutional, and just,

344 and, when possible, consistently with any fair rendering of the words, will so construe them as not to make them otherwise."

A statute which will admit of two interpretations, one valid and the other invalid, will receive the interpretation sustaining its validity.

Ferguson *vs.* Borough of Stamford, 22 Atl. Rep., 782; 60 Conn., 482.

In the case last cited the supreme court of Connecticut said: "A statute which will admit of two interpretations, one just and valid, the other unjust and unvalid, will ordinarily receive the former. It is no part of the duty of the court to be astute in order to invalidate a statute. It will rather strive to so interpret it as to sustain its validity and give effect to the intention of the legislature."

Boisden *vs.* Citizens' Bank, 29 American Dec., 453.
Bloodgood *vs.* Mohawk, etc., R. R. Co., 31 Am. Dec., 313.
Santo *vs.* State, 63 Am. Dec., 487.

Any other construction than that which we have given to the words of section 129 of this act, providing that "the State board of tax commissioners is hereby given all the powers given to county boards of review," would render the words meaningless, and this is never to be done if it can be avoided. It is a well-recognized rule that the entire statute must be construed together and effect must be given to every part of a statute if it can be done without manifestly violating the intention of the legislature.

Smith *vs.* Randall, 65 Am. Dec., 475.
345 B. & I. R. R. Co. *vs.* Gregory, 58 Am. Dec., 589.
Perkinson *vs.* State, 74 Am. Dec., 522.
Montesque *vs.* Heil, 23 Am. Dec., 471.
Gates *vs.* Salmon, 95 Am. Dec., 189.

As to whether the portion of section 129 which we have quoted gives to the State board the right attempted to be conferred upon county boards by sec. 114 in relation to serving notice upon and changing or adding to the valuation of the property of individual tax-payers is a matter about which we are not here concerned, as that question is in no way involved in this case; hence we indicate no opinion concerning it.

346 The statute, when viewed in the light of the construction we have placed upon it and to which it is clearly entitled, provides for the assessment of property other than "railroad track" and "rolling stock" by assessors and county boards of review, and provides that persons aggrieved may appear before county boards of review and make a showing, and vests in such county boards the power, either on such showing or on their own motion, to correct errors made in any assessment, and further provides for appeals from the decisions of county boards by parties aggrieved and a hearing of the State board on appeal which is final. In relation to property denominated "railroad track" and "rolling stock" it provides for the filing by railroad companies of a complete statement in relation to such property and its value with the auditor of state, which shall by such auditor be laid before the State board. It further authorizes the State board and the members thereof to gain further information concerning such property and its value and to assess it at its true cash value, and that in making such assessment such State board shall not be bound by any reports or estimates of value of railroad property, real estate, or other property as returned

to the county auditors or auditor of state, and that such
347 State board shall have power to correct any assessment of
"railroad track" or "rolling stock" on showing or on its own motion. The difference existing in relation to the assessments of the various classes of property under the law is that the assessment of some classes of property commences with the value being first fixed by the assessor, with authority vested in the county board to hear the complaints of aggrieved parties and correct the assessment, and a right on the part of the property-owner to take an appeal to the State board. In the case of railroad companies, as respects their property denominated "railroad track" and "rolling stock," the schedule is fixed with the auditor of state and the assessment is made in the first instance by the State board, and their right to make a showing and to have any errors made against them corrected is to the same board that made the assessment, and that board is vested with power to correct errors and change assessments and valuations of such property in such manner as will in their judgment make the valuation thereof just and equal.

Secs. 114, pp. 246–248, Acts of 1891.

When stripped of all verbiage the gist of the objection to the law on account of its not affording to railway companies in the assessment of the property denominated "railroad track" and "rolling stock" equal protection of the law is that the State board of tax commissioners, the highest body or board in the State having jurisdiction or which is given authority to either assess or correct assessments of property, is given original jurisdiction in the as-
348 sessment and valuation of this class of property, while it acquires jurisdiction in other classes of property by appeal. Under the act the assessment and valuation fixed upon property is not necessar-y final until passed upon by the State board. If parties are content with an assessment upon their property by the assessor or county board it may rest at that point, but an appeal may be taken to the State board.

It seems to us that the claim that the statute denies to railway companies the equal protection of the law is based on an erroneous construction of the statute, for, with the view we take of the statute and the rights of railway companies under it, the claim that it denies equal protection has no substantial foundation to rest upon. Equal protection of the law does not require that all persons shall have the right of hearing or a trial before the same tribunal and in all the same tribunals and have the same right of appeal from one to another. If it has any such interpretation, then the theory upon which our courts are constructed and given jurisdiction in various causes of action, the right of appeal given in some cases, in others not, and the jurisdiction of some courts made final in one class of cases and in others not, is all wrong and our system of jurisprudence must fall; but that such is not the theory or interpretation to be given to sec. 1, article 14, of the Constitution of the United States is too clear to admit of argument or the citation of authority. In

our system of jurisprudence courts of different grades and
349 jurisdictions are established, and an appeal is allowed from one to another only when the right of appeal is given by statutory enactment.

In United States *vs.* Crookshank *et al.*, 92 U. S., 542, Chief Justice Waite, delivering the opinion, in discussing the *opinions* of the fourteenth amendment, says that it "prohibits a State from depriving any person of life, liberty, or property without due process of law, but this adds nothing to the rights of one citizen against another; it simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society." Following this he says: "The fourteenth amendment prohibits a State from denying to any person within its jurisdiction the equal protection of the laws, but this provision does not, any more than the one which precedes it and which we have just considered, add anything to the rights which one citizen has under the Constitution against another. The quality of the rights of citizens is a principle of republicanism. Every republican government is in duty bound to protect all its citizens in the enjoyment of this principle if within its power. That duty was originally assumed by the States, and it still remains there."

From this it would seem that this phrase in the amendment added but little to what had theretofore been assumed by the States and embodied in the words "due process of law;" and in the
350 case of Caldwell *vs.* Texas, 134 U. S., 692, Chief Justice Fuller, in delivering the opinion of the court, said: "By the fourteenth amendment the powers of the States in dealing with crime within their borders are not limited, but no State can deprive particular persons or classes of persons of equal and impartial justice under the law, * * * and due process is so secured by laws operating on all alike and not subjecting the individual to the arbitrary exercise of the powers of government, unrestrained by the established principles of private right and distributive justice."

It must follow that a law which operates alike upon all persons under like circumstances is not obnoxious to the provision in the fourteenth amendment to the U. S. Constitution that no person shall be denied the equal protection of the laws, for such a law operates alike upon every person under like circumstances. If this were not true, then a large portion of the legislation of the various States, universally held valid, would be obnoxious to this provision of the Federal Constitution. Laws providing for the assessment of certain property for public improvements only affect such property as designated, and persons owning no such property are unaffected by the law; but all who are in like circumstances may be affected by it, and therefore the law affects all equally under like conditions and circumstances.

The statute in question provides a general system for tax-
351 ation and assessment and valuation of property, and the method of ascertaining the valuation and assessing each class and kind of property applies alike to all persons holding and

owning the same class of property, and it applies alike to all persons under like circumstances and conditions, and we do not think it denies railway companies the equal protection of the laws, and it is not in conflict with this provision of the Federal Constitution.

Is the act objectionable on the ground that it denies to railway companies due process of law? If this act is repugnant to either the constitution of this State or the Constitution of the United States for this reason, it would seem that almost any law for the assessment and taxation of the property which stopped short of resorting to a court of justice and permitting an issue to be joined and tried as to the value of the property would be likewise objectionable. This act requires railway companies to first file verified inventories of their property and of its value to be submitted to the assessing board. Then it allows after assessment a correction in assessments and valuation on the showing of the company or on the motion of the board itself.

Judge Cooley, in his work on Taxation, 2nd ed., 432, says: "Very summary remedies have been allowed in every age and country for the collection by the Government of its revenues. They have been considered a matter of State necessity. Without them it might be
352 possible for a party which had been defeated in its efforts to obtain possession of the Government in the constitutional way to cripple the Government for the time being and possibly break it up altogether. If the State might be deprived of the resources for continuing its existence and performing its regular functions until a revenue could be collected by the process provided for the enforcement of debts owing to individuals it would be continually at the mercy of factions and discontented parties. Obviously this could not be tolerated."

At page 47 the author says: "This is a constitutional guaranty which has come to us from Magna Charta, which declares that no person shall be deprived of life, liberty, or property except by the judgment of his peers or the law of the land." The alternative provisions of this guaranty have sometimes been supposed to mean the same thing and the guaranty itself to entitle every person to have any demand made upon him submitted to the determination of a jury of the vicinage. Such a construction applied in tax cases would work a thorough and radical change in the principles on which taxation is now supposed to rest. * * * Such a construction of a clause agreed upon as an important provision in a charter of government can never have been intended. The words the "law of the land" and "due process of law" mean one and the same thing, and mean that one shall hold his life, liberty, and property under the protection of the general rules which govern society, and therefore the learned author from whom we have quoted, on page
48, in speaking of the words "the law of the land," well says:
353 "The clause recited from Magna Charta does not imply the necessity for judicial action in every case in which the property of the citizen may be taken for the public use. On the con-

trary, a legislative act for that purpose, when clearly within the limits of legislative authority, is of itself the law of the land."

This is true not only of an act levying taxes, but in everything which pertains to the assessment and collection of taxes.

Judge Cooley in his work recognizes the right of a party to a hearing before his rights are finally precluded, and it is only necessary to determine what constitutes a hearing, so *as* that the individual will not be deprived of his property without due process of law, or what is the character of the hearing contemplated in the assessment and collection of taxes so as to constitute due process of law. Certainly it is not a judicial procedure, a trial by jury, but a summary hearing that is contemplated in such proceedings. Judge Cooley, p. 747, Cooley on Taxation, *supra*, says that the assessor, while he still has the list or roll in his hands uncompleted, may correct any assessment on his own motion on an application when satisfied that it is either wholly or in part illegal, and that no statute could be necessary to give to him such power. By this rule the State board who assess "railroad track" and "rolling stock" while in session and having control of the assessment could correct any error and remit any illegal or unjust assessment made against any railway company in the absence of any express statutory authority
354 giving them the right to do so, but he says taxing officers and boards of review in the absence of special authority are to accept the assessment as legal and just, and levy and collect the taxes accordingly. The taxing officers and boards are such as have no power to assess, and he states the remedy usually given by statute for the correction of errors is by review, either by the assessor himself or in some form of appellate proceedings. The rule as recognized by Mr. Cooley is that if the individual have the right to a hearing either before the assessor himself or some reviewing board having the right to correct the assessment the requirement of the Constitution is complied with and the individual is not denied due process of law.

In Hann. and St. Joe R. R. Co. *vs.* State Board of Equalization, 64 Mo., 294, it was held that the State board having power to assess railway property the assessment would be valid even though their record showed that the board heard no evidence. In the same case it was held that under the law of that State every person had an appeal from the assessment of his property for taxation, and that railroad companies should have the same right, and that great injustice might be done by the board, for which they would be remediless until the legislature had provided for an appeal in their favor, and that the courts cannot interpose between the board and the companies.

In Porter *vs.* The Rockford, R. I. & St. L. R. R. Co., 76 Ill., 561, speaking of the assessment of the property of railway com-
355 panies by the State board of equalization under a law very similar to the statute under consideration, the court says: "Whether property is assessed by local assessors or by the State board of equalization it is, in the language of the constitution, assessed by some person or persons elected or appointed in the man-

ner the General Assembly has directed, and not otherwise. No attempt is made by this clause of the constitution to limit the number of those who shall be elected or appointed for this purpose or to prohibit or in any manner to prescribe how the value of property shall be ascertained by them. Admitting that the chief end had in view was to secure uniformity in valuation, it would seem that the present system, by which some property is assessed by local assessors and other property is assessed by the board of equalization, would tend as much toward accomplishing that result as would a system by which all the property in the State should be assessed in the town in which it is located by the local assessor. * * * We cannot believe that a board of equalization having the assessed values of all other taxable property in the State before them for the purpose of equalization has less facility for fixing a fair proportionate value upon corporate property than the local assessors have.

"There is, moreover, an almost insuperable difficulty which must attend all attempts by local assessors to assess the capital stock, franchise, roadway, and rolling stock of most railroad companies. Such roads are usually located through several counties. The cost of construction in a particular town or county affords no criterion of the value of that portion of the road, for every mile of the road is equally indispensable to its existance as a whole and contributes proportionately to its principal earnings. Local improvements may indeed vary, and they are required to be assessed by the local assessors, but the road and its equipments constitute a single entire property. In determining the value of such property the question is neither one of original cost nor of the intrinsic value of the various items of which the road and its equipment are composed, taken separately, but what it is worth with all its capabilities and facilities as a railroad. The franchise extends to the entire corporate property, and it is not possible that it can be divided. It must, if assessed at all, be assessed as an entirety, and this, as we have already shown, may be in connection with the property which it is attached."

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Sec. 1, art. 10, of the constitution of this State vests the power of taxation in the General Assembly. It provides that the "General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property, both *and* real and personal, excepting," &c.

The first clause of this section is certainly complied with when the same basis of assessment is fixed for all property and the same rate of taxation is fixed within the district subject to taxation—that is to say, there is uniformity and equality of assessment and taxation when all the property is to be assessed at its true cash value and the same rate is fixed on all property subject to assessment for the tax. If it be a tax for State purposes the rate must be the same throughout the State; if for county purposes or township purposes the same rule would apply. The law under consideration is not subject to objection on account of inequality in rate of assessment or taxation, for it provides that all property shall

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be assessed at its true cash value, and the rates are the same within the respective taxing districts, and no objection is urged to the law on this account.

Gilson *et al. vs.* The Board of Commissioners of Rush County, 128 Ind., 65.

As to the latter clause of the section of the constitution providing that the General Assembly "shall prescribe such regulations as shall secure a just — for taxation," it leaves it to the legislature to prescribe the mode by which the valuation of all property shall be ascertained, enjoining upon them the one obligation to provide such regulations as shall secure a just valuation. There is certainly no reason why the legislature may not, under the constitution of the State, provide for fixing the value of "railroad track" and "rolling stock" of railway companies by the State board of tax commissioners while other property is assessed by local boards. The value is ascertained according to the regulations prescribed by the legislature, and we are unable to see any reason why a valuation secured in that way should not be a just valuation. The legislature
358 by the act in question has prescribed regulations for the purpose of securing the valuation of all property for taxation. The method prescribed would seem to have in view the fixing of the value on property by persons and boards best calculated to know the value of the property required to be valued by them and with a view of arriving at a just and equal valuation of all the property within the State subject to taxation, providing county boards of review to correct errors of local assessors and then a State board to fix the value of the property of railroad companies extending through the State and to equalize the valuations and assessments of property throughout the State. That the method prescribed in the act is one calculated to secure a just and equal valuation and assessment of property throughout the State cannot be reasonably questioned and is one which the legislature had the right to adopt.

Lowell *vs.* Com'rs, etc., 152 Mass., 380.
St. L., V. & T. H. R. R. Co. *vs.* Sewell, 88 Ill., 535.
Republic L. I. Co. *vs.* Pollok, 75 Ill., 298.
Case *vs.* Dean, 16 Mich., 12.
State Railroad Tax Cases, 92 U. S., 575.

No notice other than that contained in the law itself is necessary to the validity of the assessment. The railroad companies are bound by the law and must take notice of its provisions. They submit a schedule to the State board through the auditor of state for the very purpose of having the valuation fixed upon the
359 property and the assessment thereof by such board. They, through their written schedule and statement of values, are heard by the board. The board has under its control the assessment-roll of railroad companies' property, and by the terms of the statute the board is given power to correct any errors in assessment and to change valuations on showing or on its own motion. Rail-

way companies have the same right of a hearing before the State board that any other property-owner has before the county board, for the same powers which are given to the county boards by the act are given to the State board. The State board is required to make rules governing their meetings and procedure.

In Hyland, auditor, *et al. vs.* The Brazil Block Coal Co., 128 Ind., 335, it is held that when the time for the meeting of a county board of equalization is fixed by the law and the duties of the board also fixed by law, and notice of the time of meeting of the county board as required by law has been given, and when the law required that corporations should make out and deliver to the assessor schedules of their property to be delivered to such county board, and the law made the duty of such board to value and assess the property of such corporations, that no notice to the individual corporation was necessary to make the appraisement and assessment of the property of the corporation valid, the law having fixed the time of the meeting of — board and required corporations to file schedules with the assessor to be presented to the board and made it the duty of the board
360 to appraise and assess the same. Corporations were bound to take notice of the time of the meeting of the board that these schedules would be presented to the board and such board would appraise and assess the same as required by the law, and no other notice is necessary. There can be no difference in this respect as to the validity of a law, or the rights of the parties under it, between a statute which fixed the time for the meeting of the board and one which fixed the time and also required the auditor or some other officer to give notice of the time of the meeting in advance, for if the law fixed the time of the meeting all persons are bound to take notice that it will meet, and when it requires a party to file a schedule of his property and makes it the duty of the board to appraise and assess it he is likewise bound to take notice of such facts also, and if he desires to be heard in relation to such matters as the board are charged with the duty of performing he must appear and make his wishes known in relation thereto. As well said in Hyland *vs.* The Brazil B. C. Co., *supra:* "The case is entirely unlike that of an individual tax-payer, for he cannot know that the board will take any action upon his list, whereas the corporation knows, as matter of law, that the board will act upon its statement, since that is the principal purpose for which the sworn statement is required. It is manifest that neither the principle decided in Kuntz *vs.* Sumption, *supra*, nor the line of reasoning there
361 pursued is relevant to the question here presented."

The statute under consideration fixes the time for the meeting of the State board. It requires railway companies to file schedules and inventories with the auditor of state to be presented by him to the State board, and makes it the duty of the State board to appraise and assess the property denominated by the act as "railroad track" and "rolling stock" belonging to railroad companies at its true cash value, and further provides that the board shall not be bound by estimates of the value of such property as returned to the auditor of state. Of all of these provisions the rail-

way companies are bound to take notice, and if they desire to make any further showing it is the duty of such companies to appear before the boards and make their showing.

In Cooley on Taxation, p. 364, 5, it is said: "It is not customary to provide that the tax-payer shall be heard before the assessment is made except when a list is called for from him, but a hearing is given afterwards, either before the assessors themselves or before some court or board of review."

That is just what is provided for by the act of 1891. The companies are required by the law to submit a schedule through the auditor of state to the State board and authorizes a hearing before the State board. As regards notice of the meeting of the board before a hearing may be had the author in the same section, continuing, says: "And of the meeting of that court or board the
362 tax-payer must in some manner be informed, either by personal notice which is reasonably certain to reach him or, which is equivalent, by some general law which fixes the time and place of meeting, and of which he must take notice. The last is a common method of bringing the assessment to the notice of the tax-payer, and it is perhaps the best of all, because it comes to be generally understood and is remembered."

This principle is common in its application. When a party brings an action in court the defendant is notified to appear on a certain day of a particular term of the court. The term at which the summons is returnable or for which the notice is given terminates without a disposition of the cause. The cause is still pending in court, to be heard at a subsequent term of court. All parties are bound to take notice of the time fixed by the law for the holding of subsequent terms of court. The matter of assessment and appraisement of the property of railroad companies is pending before the State board and parties are bound to take notice of the time fixed by law for the meeting of the board and is in harmony with the theory that all persons are presumed to know the law. Desty on Taxation, vol. 1, pp. 599 & 600, says: "All parties are bound to take notice of the day of the meeting of the commissioners when the day is appointed by law, and under the general notice parties must attend the meetings as they would the sessions of a court until their assessment is passed upon, and when once this is done no change can afterwards be made without special notice."

363 The whole body of tax-payers are not required to attend a sitting of a county or State board of review, for the value is fixed upon most by the assessor, but such as are required to file with such boards or either of them a schedule of property, which property so scheduled is to be appraised and assessed by such board. As to such parties the matter of appraisement and assessment is pending before such board, the knowledge of which is conveyed to them by the law itself, and if they desire to be heard further or to have errors corrected they must appear before such board.

Smith, county treasurer, *vs.* Rude Bros. Man'f'g Co., 30 N. E., 947.

The conclusion we reach is that the statute under consideration is a valid enactment and not in conflict with any provisions of the Constitution, either of this State or the United States, and the State board of tax commissioners had full power to assess the property of railway companies denominated "railroad track" and "rolling stock;" that the railway companies were properly before that board and were entitled to a hearing and were not denied due process of law or equal protection of the laws within the meaning of the Constitution of this State or the United States, and this conclusion, we think, is in harmony with the almost universal line of authorities, and we deem it unnecessary to take up and discuss in detail the numerous authorities cited in this case, as it would extend the decision to an immeasurable length, and we content ourselves by adhering to what we regard the correct principles deducible
364 from the authorities. The State board having fixed the valuation and assessed the property, their action in this behalf is final and cannot be avoided or set aside except for fraud on the part of the State board of tax commissioners, which would render the decision void. Fraud vitiates even the most solemn judicial proceedings and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties, but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the State board of appellant's property on the ground that the State board was guilty of fraud or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies, and if it were so contended the averments of the complaint fall far short of being sufficient to present such a question.

What we have said disposes of the major portions of the questions presented in the case. The court having no power to review the proceedings, the action of the State board being final, no right of action existed to set it aside except for fraud, and it not being attacked on that ground no evidence was admissible, for it is a well-settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this State.

365 Cooley on Taxation, p. 748, and authorities there cited.
Bass *et al. vs.* The City of Fort Wayne *et al.*, 121 Ind., 389.
Sims *vs.* Hines, 121 Ind., 534.
McCollum *et al. vs.* Uhl, 128 Ind., 304.
The C. & W. G. R. Co. *vs.* Black, 32 Ind., 468.

The court cannot inquire what evidence the board made its assessment upon and determine as to whether such board arrived at a just valuation or not. The board has passed upon that question and with its adjudication the matter ends.

The decision of the State board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive.

It is contended by counsel that the law authorizes and the State

board did import values to the "railroad track" and "rolling stock" taxable in Indiana—values belonging wholly to corporate property situate in other States and taxable in other States—thus imposing double taxation on railway companies ow-ing or operating interstate lines of railways. This is based upon the provision of the statute—sec. 80 of the act—providing that the "rolling stock" shall be listed and taxed in the several counties, &c., in proportion that the main track used or operated in such county, &c., bears to the length of the main track used or operated by such person, and the schedules required to be filed by sections 83 and 85. These schedules are required to be filed for the purpose of giving a de-
366 scription to the property and as a source of information as to value, but, expressly provided by the act, such values are not conclusive. The board may act on other information and the personal knowledge of values, and the act expressly provides that the assessment shall be made of this class of property at its true cash value, the same as all other property.

Section 79 provides that railroad "track" shall be listed and taxed in counties, &c., in proportion that the length of main track in such county, &c., bears to the whole length of the road in the State. It is so apparent and, we think, so well settled by authority that the value of a railroad or "railroad track" and "rolling stock" is so completely dependent on its length of line, connections, beginning, and terminus and the character of the country through which it runs in relation to its products and the character and extent of its population, so as that it cannot be separated from these and many other surroundings and elements of value which must necessarily enter into its appraisement and assessment at its fair cash value for taxation as that it can hardly be a controverted proposition.

It is evident that no fair or equitable value could be placed on a "railroad track" by severing it into parts extending from one township or county line to another, or even from one State line to another, and estimating only the portions lying within the borders of a single township, county, or State, independently of its connection be-
367 yond such lines or by considering the cost of constructing any such division, nor could the value of an engine or car or other property coming within the class of property denominated in the act under consideration as rolling stock be determined by considering the purpose for which it was used in any State or subdivision of a State or the cost of construction of the same, and to limit the right of the State to tax "rolling stock" which might, at the date of assessment, be found within the State or subdivision of the State would be, in effect, to release such property from taxation.

A railroad is valuable as a whole and every section of the line going to make up the whole is essential. The portion of a track crossing unreclaimed land of practically no value is as valuable as that portion which runs through a populous city, in so far as its purpose and use is that of an interstate line, for without either the connection would be broken and its use destroyed for that purpose. The value of such portion is increased by reason of its connection.

In the State Railroad Tax cases, 92 U. S., 575, the court says: "This court has expressly held in two cases where the road of a corporation ran through different States that the tax upon the income or franchise of the road was properly apportioned by taking the whole income or value of the franchise and the length of the road within each State as the basis of taxation."

In speaking of rate of taxation the court, in the same case, says:

"But the contention is that the rule of treating the road, its
368 rolling stock and franchises, as a unit and assessing it as a whole, on which each municipality levies its taxes according to the length of the road within its limits, violates the principle of this section. We have already discussed this question and are of the opinion that taxes assessed by that rule on the railroad property by the municipality are uniform where the rate of taxation is the same on the assessment thus ascertained that it is on other property."

The court, in the case last cited, expressly recognizes the legality of an assessment on rolling stock valued in accordance with the rule of treating the road as a unit and taking such a proportion of its value as the length of the road lying within the State bears to the whole road, for if an appraisement and assessment of a railroad, including in such valuation its rolling stock and franchise, can be assessed, certainly its rolling stock can be valued and assessed separately in the same manner, for values would not be imported in the one method more than the other. The court in the same case discuss and sustain the same method of assessing the railroad track, and say: It well may be doubted whether any better mode of determining the value has been devised.

The decision in The Western Union Telegraph Co. *vs.* Massachusetts, 125 U. S., 530, is in harmony with this theory.

Presumptively the line of railroad track and rolling stock is of
no greater value per mile beyond the borders of the State
369 than within the borders of the State, and we do not think the law necessarily requires a construction by which, if the line of the railroad track or rolling stock situate outside the State was of greater value per mile than that inside the State, that the board should, by equalizing the value, import values and tax property situate and taxable without the limits of the State and taxable in another State. When the whole act is read together it purports to be only an act to tax such property as is subject to taxation within the State. Section 80 declares that the movable property belonging to a railroad company shall be held to be personal property and denominated personal property, while section 3 provides that "all property within the jurisdiction of this State not expressly exempted shall be subject to taxation." Section 4 provides that for the purpose of taxation real property shall include all lands within the State, etc. Personal property shall include all goods and chattels within the State, all ships, boats, whether at home or abroad, and their appurtenances; all goods, chattels, and effects belonging to inhabitants of this State situate without this State, except the property actually and permanently invested in business in another State.

Sec. 83 requires the schedules to show the number of miles of main track over which the rolling stock is used within the State of Indiana.

The record of the State board, which, as we have said, is conclusive, affirmatively shows that the valuation of "railroad track" and "rolling stock" was fixed upon such property within this State. The record affirmatively shows that "the State board of tax commissioners having had under consideration the assessment of
370 the several railroads in the State, the following valuation per mile of the various roads within this State;" then follows the schedule and valuation. Following such schedules and valuation it is stated that, "making liberal allowance for all proper deductions," they "fix the values," as hereinbefore set forth.

Objection is made to a recital in the record of the board which it is contended shows affirmatively that the board fixed the value of the roads upon a wrong basis. We think there is nothing in this objection. It is a mere statement that in "arriving at the basis for the estimate of said values the board considered the cost of the construction and the equipment of said roads, the market value of the stocks and bonds, and the gross and net earnings of each of said roads, and all other matters appertaining thereto that would assist the board in arriving at a true cash value of the same." They considered all matters appertaining to the road that would assist them in arriving at a true cash value. The things they specifically enumerate were proper to consider. The board was not limited to the schedules of the railway companies and rates fixed by them, but had the right to such other information which would enable them to arrive at a just valuation. But this court cannot consider or review the question as to what evidence the board acted upon in arriving at the value assessed.

It is further urged that the method of assessment taxes interstate commerce, but we do not think so. Taxing the property
371 of a corporation engaged in interstate commerce is not taxing interstate commerce, but what we have heretofore said disposes of this question, for in holding the method by which the valuation and assessments were made valid relieves it from this objection, as it cannot and is not contended that the property is not subject to taxation, but only contended that it cannot be assessed in the manner prescribed in this act, which it is claimed imports values into this State from other States for taxation, thereby imposing unauthorized burdens on interstate commerce.

It is finally contended that the act creating the State board and defining its powers and duties is unconstitutional and void for the reason, in brief, that judicial powers are granted to such board, and because two State executive and administrative officers are created and made continuously appointed by the governor and not elected by the people; that executive and administrative officers cannot exercise judicial powers and judicial officers must by the Constitution be elected. The members of the State board are not judicial officers nor are judicial powers conferred upon them by the act under

consideration within the meaning of the Constitution. (Langenberg *vs.* Decker, 31 N. E. R., 190.)

It is very common, if not an almost universal custom in this State and other States, to make, by statutory enactment, certain of the State officers *ex officio* members of the State board of equalization. Such, we think, has been the almost, if not the *the* entirely, unbroken practice in this State since the adoption of the present Con-
372 stitution, and if, as held in Langenberg *vs.* Decker, *supra*, they are not vested with such judicial powers as to constitute them a court, but only exercise such quasi-judicial functions as does every public officer vested with discretionary power, they are certainly eligible to become members of such a board. Nor do we think the other members of the board whom the law provides shall be appointed by the governor are administrative State officers charged with such duties as that by the Constitution they are required to be elected by the people. They are not administrative officers in charge of any separate department of the State government. The same rule must govern in relation to their selection as the selection of members of the local and county boards of equalization and any persons or boards for the appraisement and assessment of values and benefits and injuries to property, and the practice of appointing such persons and members of boards has always existed. If they may be appointed for one sitting of a board, or to make appraisement of specific property, the value of which is to be ascertained, then certainly the law may authorize their appointment for a longer term, and that such appointment may be authorized by statute we have no doubt, and this conclusion is in harmony with the decisions of this court in The State *ex rel.* Collett *vs.* Gorby, 122 Ind., 17, and The State *ex rel.* Yancey *vs.* Hyde, 129 Ind., 296.

We have considered and decided all of the questions material
373 to the determination of the cause. We find no error in the record.

Judgment affirmed.

374 And thereupon, the court being fully advised in the premises, it is therefore considered by the court that the judgment and decree of the Marion circuit court in the above-entitled cause be in all things affirmed at the cost of the appellant.

And it is further considered by the court that the appellees recover of the appellant the sum of — dollars for their costs and charges in this behalf expended.

375 Be it further remembered that on this 20 day of February, 1893, the same being the 73 judicial day of the November term of the supreme court of Indiana for the year 1892, came again the parties, by their attorneys, and the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company filed in this cause in this court its assignment of errors; which said assignment of errors is in the words and figures following, to wit:

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,

vs.

VICTOR M. BACKUS, J. B. BREWER, Thomas McCay, Simeon S. Bosserman, Allen W. Reynolds, Andrew O. Castleman, Joseph D. Vurpillar, Charles L. Woll, E. B. Thomas, George W. Hoffman, H. F. Small, Hiram A. B. Moorhous, George Burkit, Daniel Boshour, E. B. Dibbell, J. R. Casti, Marcus H. Hemphill, G. B. Clark, Samuel A. Martindale, Amos A. Covalt, W. A. Markland, James K. Armstrong, A. F. Swoveland, William C. Barnard, Thomas E. Valentine, Frank McCollough, William Dark, William J. May, A. L. Bateman,
376 Richard Carter, William Wiseman, Frank Brodhicker, E. Hahlbrand, Hugh Colvin, John A. Jenkins, W. B. Veasey, Levi H. Scott, Jacob Best, Daniel H. Demaree, L. M. Robinson, Charles B. Curtis, A. E. Rust, D. Reeder, Jacob H. Thomas, Robert Montgomery, Thomas A. Jones, Paul Kerr, William N. Young, William P. Cook, Martin L. Stratton, M. C. Jay, John Hayes, I. W. St. John, George W. Veal, William N. McCullough, John G. Grahs, Albert W. Saint, John R. Page, William A. Fulton, Azro H. Wilkinson, C. E. Hiatt, Joseph H. Parker, M. McCrea, John P. McGeath, Defendants in Error.

In Error to the Supreme Court of the State of Indiana.

Assignment of Errors.

1. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the act of the legislature of the State of Indiana concerning taxation, approved March 6, 1891, "is a valid enactment and not in conflict with any provisions of the Constitution either of this State or of the United States."

377 2. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana, concerning taxation, approved March 6, 1891, relating to and providing for the assessment and valuation, for taxation, of the "railroad track" and "rolling stock" of The Pittsburgh,

Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, and of other like corporations, do provide for and secure to the said The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company and other like corporations the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of their "railroad track" and "rolling stock," properly and lawfully subject to taxation in Indiana.

3. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the sections and provisions of the act of the legislature of the State of Indiana, concerning taxation, approved March 6, 1891, relating to and providing for the assessment and valuation, for taxation, of the "railroad track" and "rolling stock" of The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, and other like corporations, do not deny to the said The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company and other like corporations "the equal protection of the laws" required by section 1 of the fourteenth amendment to the Constitution of the United States, touching the assessment and valuation of their "rail-
378 road track" and "rolling stock," subject to taxation in Indiana.

4. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the act of the legislature of Indiana, concerning taxation, approved March 6, 1891, did give to plaintiff in error the right and opportunity to be heard for the correction of errors, mistakes, and overvaluations in the assessment of plaintiff's "railroad track" and "rolling stock," after the State board of tax commissioners agreed upon its assessments and valuations thereof, and before the same were made final, for the following reasons: First. Because the said act limits the sessions of said board to forty days, and does not require said board to make or announce any assessments and valuations of "railroad track" and "rolling stock" prior to the last day of its session, thereby enabling said board to prevent the possibility of any hearing for the correction of errors, mistakes, and overvaluations made by said board in the assessment and valuation of "railroad track" and "rolling stock." Second. Because the record in this cause conclusively proves that the State board of tax commissioners for the year 1891 did not conclude or agree upon any assessment and valuation of the "railroad track" and "rolling stock" of plaintiff in error herein, or of any railway corporation subject to taxation in Indiana, until September 8, 1891; that on September 8, 1891, said board agreed upon its assessments and valuations of the "railroad track" and "rolling stock" of all the railway corporations subject to taxation in Indiana, and delivered its memoranda
379 of all of said assessments and valuations to its clerk for recording the same; that said board did not give to plaintiff in error herein, or any other railway corporation subject to taxation in Indiana, any notice or information whatever that said board had agreed upon its assessments and valuations of "railroad track" and

"rolling stock;" that the recording of said assessments and valuations was done during the last three days of said session of said board, and that the assessments and valuations of the "railroad track" and "rolling stock" of plaintiff in error and of all other railway corporations subject to taxation in Indiana were finally made by said board on September 11, 1891, which was the fortieth and last day of its session as limited by said act.

Wherefore plaintiff in error avers that under said act said board could and did prevent the possibility of any hearing for the correction of errors, mistakes, and overvaluations of the "railroad track" and "rolling stock" of plaintiff in error herein.

5. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the State board of tax commissioners did not exceed its jurisdiction in considering, estimating, and taking into account as elements of value of the "railroad track" and "rolling stock" of plaintiff in error, subject to taxation in Indiana, franchises granted to plaintiff by States other than Indiana and leases, operating contracts, and other contract rights held and owned by plaintiff under charters granted by States other than Indiana, and in holding and adjudging a
380 law valid and not in conflict with the Constitution of the United States which permits and in effect requires and in this case has resulted in the assessment and valuation for taxation in Indiana of franchises granted to the plaintiff by other States and leases, operating contracts, and other contract rights procured and held by plaintiff under charters granted by other States as constituting elements of taxable value of the "railroad track" and "rolling stock" of plaintiff subject to taxation in Indiana.

6. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging the law in question valid and not in conflict with the Constitution of the United States when it permits and in effect requires and has in this case resulted in causing large amounts and values of "rolling stock" of plaintiff in error, which is never used in Indiana or in connection with the traffic and transportation carried on by plaintiff in error over and upon its lines of railway in or across the State of Indiana and which is used and operated wholly and solely in other States and is fully taxed in such other States, to be assessed and valued for taxation in Indiana, and in holding and adjudging the law in question valid and not in conflict with the Constitution of the United States when it permits and in effect requires and in plaintiff's case has resulted in the taxation in Indiana of the earnings of plaintiff earned in interstate traffic and transportation carried on by plaintiff in States other than Indiana, and in the taxation in Indiana of the instruments, appliances, and facilities owned, used, and operated by plaintiff in its interstate traffic and transportation in States other than Indiana.

381 7. The supreme court of Indiana, in its opinion and judgment rendered in this cause, erred in holding and adjudging that the State board of tax commissioners in assessing and valuing the "railroad track" of plaintiff in error, which is situated in In-

diana, had the right to assume that an average mile of plaintiff's "railroad track" outside of Indiana is of no greater taxable value than an average mile of plaintiff's "railroad track" within Indiana, and in holding and adjudging that the said board, acting upon said assumption, had the right in assessing and valuing plaintiff's "railroad track" in Indiana to consider, estimate, and take into account the entire value of all of plaintiff's "railroad track," terminals, and terminal facilities situated in Illinois, Ohio, West Virginia, and Pennsylvania as adding large increments and elements of value to the taxable value of that portion of plaintiff's "railroad track" situated in Indiana over and above what its taxable value would have been held to be if plaintiff had owned no "railroad track" outside of Indiana.

And plaintiff in error avers that such holding and judgment of the supreme court of Indiana was and is especially erroneous and hurtful in this case from the fact that the evidence in the record conclusively proves that an average mile of plaintiff's "railroad track" outside of Indiana is of far greater value than an average mile of plaintiff's "railroad track" within Indiana, and that the terminals, terminal property, and terminal facilities owned
382 by plaintiff outside of Indiana are vastly more valuable than the terminals, terminal property, and terminal facilities owned by plaintiff within the State of Indiana.

Wherefore The Pittsburgh, Cincinnati, Chicago and St. Louis Railroad Company, plaintiff in error herein, prays that the holdings, decision, and judgment of the supreme court of Indiana may be reversed.

JOHN M. BUTLER,
ALPHEUS H. SNOW,
JOHN MAURICE BUTLER,
Attorneys for Plaintiff in Error.

S. O. PICKENS, *Of Counsel.*

383 And afterwards, to wit, on the 20 day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said court, came agains the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, by its said attorneys, and filed in the office of the clerk of the supreme court its petition for allowance of writ of error, issuance of citation, and continuance of injunction pending the decision of the United States Supreme Court on writ of error, said petition being in the words and figures following, to wit:

384 In the Supreme Court of Indiana.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY
vs.
VICTOR M. BACKUS, Treasurer of Marion County, Indiana, and Others.

Petition for allowance of writ of error, issuance of citation, and continuance of injunction pending decision of United States Supreme Court on writ of error.

The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company comes now, by its attorneys, and shows the court that upon the pleadings and face of the record of this cause the following Federal questions are presented and involved, to wit:

1. Whether or not the act of the legislature of Indiana concerning taxation, approved March 6, 1891, provides to the plaintiff, The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and other like corporations the "due process of law" required by section 1 of the fourteenth amendment to the Constitution of the United States.

2. Whether or not the said act denies to the plaintiff, The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and other like corporations "the equal protection of the laws" required and enjoined by section 1 of the fourteenth amendment to the Constitution of the United States.

385 3. Whether or not the said act, in so far as its provisions and requirements relating to the assessment and valuation of "railroad track" and "rolling stock" are concerned, complies with the requirements of section 1 of the fourteenth amendment to the United States Constitution, because said act permits, authorizes, and renders it possible for the State board of tax commissioners to prevent and render impossible any hearing for the correction of errors, mistakes, and overvaluations in its assessments and valuations of "railroad track" and "rolling stock" by making its assessments and valuations at so late a time in its limited session as to render any hearing for the correction of errors, mistakes, and overvaluations utterly impossible.

4. Whether or not said act complies with the requirements of the Constitution of the United States, because it permits, authorizes, and renders it possible for the State board of tax commissioners to consider, estimate, assess, and value for taxation in Indiana, and as constituting increments and elements of taxable value of "railroad track" and "rolling stock" situated in and subject to taxation in Indiana, the value of franchises and franchise and contract rights granted by States other than Indiana and the value of "railroad track," terminals, terminal rights and facilities, and "rolling stock"

situated in, wholly used in, and duly taxed in States other than Indiana.

5. Whether or not the said act is in conflict with section 8, article 1, of the Constitution of the United States, in this, namely:

386 That said act permits, authorizes, and, in effect, requires the State board of tax commissioners to indirectly impose taxes upon the instruments, implements, and earnings of interstate commerce.

The said The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company further shows the court that by the opinion and judgment rendered by this court in this cause the said act of the legislature of Indiana concerning taxation, approved March 6, 1891, is held and adjudged to be valid and not in conflict with the Constitution of the United States as to any or either of the points or questions hereinabove stated.

And said plaintiff, being herein desirous to present said Federal questions to the Supreme Court of the United States for consideration and final decision, does now pray this court that a writ of error, duly signed by the clerk of this court and sealed with the seal of this court, may be allowed to said plaintiff, and that a citation duly signed by the chief justice of this court may be issued.

And inasmuch as great and irremediable wrong and injury would be done to this plaintiff, and the decision and judgment of the Supreme Court of the United States, in case it should reverse the judgment of this court and hold said act invalid and in conflict with the Constitution of the United States, would in great degree be rendered nugatory and useless for the protection of the rights and property of this plaintiff unless the defendants, appellees in this court,

387 are restrained and enjoined from collecting or attempting to collect the alleged taxes in contention in this cause pending the decision in the Supreme Court of the United States upon the writ of error sued out by this plaintiff—

Therefore the plaintiff, The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, prays that the injunction and restraining order heretofore granted to it by this court may be continued in full force pending the decision of the Supreme Court of the United States upon the writ of error sued out by said plaintiff.

And plaintiff avers that at the date of filing this petition the preparation of the transcript of the record herein for the Supreme Court of the United States is so far advanced that said transcript can be completed within a few hours, and that it will diligently and with all practicable dispatch prosecute its said writ of error to final decision and judgment; and to that end it here now offers to join and unite with the defendants in error in a motion and application to the Supreme Court of the United States to advance said cause presented by said writ of error upon its docket and assign the cause for hearing at the earliest possible day; and in order to make said motion to advance possible at an early day plaintiff avers that it will at once, without delay, file its record in the Supreme Court of the United States and will cause it to be printed as soon as possible and will cause copies of said printed record to be furnished to counsel for

defendants in error immediately after the same are printed; and plaintiff will ever pray.

BUTLER, SNOW & BUTLER,
SAMUEL O. PICKENS,
Attorneys for Petitioner, Pittsburgh, Cincinnati, Chicago and St. Louis R'w'y Co., Plaintiff in Error.

388 And afterwards, to wit, on the 20 day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said supreme court, came again the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, by its said attorneys, and filed in the office of the clerk of said supreme court its brief in support of said petition in the words and figures following, to wit:

(Here insert.)

And afterwards, to wit, on the 20 day of February, 1893, the same being the 73 judicial day of the November, 1892, term of said supreme court, came again the said defendants in error herein, by their said attorneys, and filed in the office of the clerk of said supreme court their brief in opposition to said petition, said brief being in the words and figures following:

(Here insert.)

389 And afterwards, to wit, on the 21st day of February, 1893, the same being the 74 judicial day of the November, 1892, term of said supreme court, came again The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, plaintiff in error herein, by its said attorneys, and filed in the office of the clerk of said supreme court its injunction undertaking in the words and figures following, to wit:

390 THE STATE OF INDIANA:

In the Supreme Court.

THE PITTSBURG, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Appellant,
vs.
VICTOR M. BACKUS, Treasurer of Marion County, *et al.*, Appellees.
} No. 16799.

We undertake that the appellant in the above-entitled cause shall pay to the appellees all damages and costs which may accrue to them by reason of the injunction in this action.

Witness our hands this 13th day of February, A. D. 1893.

THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY,
By J. T. BROOKS, *Vice-President.*

Attest: S. H. LIGGETT,
[SEAL.] *Secretary.*

J. T. BROOKS.
J. L. BRADLEY.
J. P. FRENZEL.

Approved this — day of February, 1893.

391 STATE OF PENNSYLVANIA, } ss.
County of Allegheny, }

Before me, the undersigned, notary public in and for said county and State, personally appeared J. T. Brooks, vice-president of the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, who acknowledged that he executed the accompanying undertaking in the suit of The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, appellant, against Victor M. Backus, treasurer of Marion county, Indiana, *et al.*, appellees, No. 16799, in the supreme court of Indiana, for and on behalf of said company, and that the same is the voluntary act and deed of said J. T. Brooks, vice-president, for and on behalf of said The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company.

Witness my hand and notarial seal this 13th day of February, A. D. 1893.

H. G. OLIPHANT,
[SEAL.] *Notary Public.*

392 STATE OF PENNSYLVANIA, } ss:
County of Allegheny, }

Before me, the undersigned, notary public in and for said county and State, personally appeared J. T. Brooks, who acknowledged the execution of the accompanying undertaking as surety thereto in the suit of The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, appellant, against Victor M. Backus, treasurer of Marion county, *et al.*, appellees, No. 16799, in the supreme court of Indiana, and the said J. T. Brooks, being by me first duly sworn, says on his oath that he owns in his own right unincumbered productive real estate of the value of two hundred thousand dollars.

Witness my hand and notarial seal this 13th day of February, 1893.

H. G. OLIPHANT,
[SEAL.] *Notary Public.*

393 And afterwards, to wit, on the 21st day of February, 1893, the same being the 74 judicial day of the November, 1892, term of said supreme court, came again the parties hereto, by their respective attorneys, and thereupon, the court having examined the briefs and argument of counsel and being fully advised in the premises, and it appearing to the court that the plaintiff in error has, with all reasonable dispatch, prosecuted its proceedings in error herein and is willing to unite with the defendants in error herein in a motion to the Supreme Court of the United States to advance this cause upon the docket and calendar of said court, it is now considered and ordered by the court that the decree rendered herein by this court, affirming the judgment of the Marion circuit court and refusing a perpetual injunction herein, be, and the same is, suspended and modified in the manner following, to wit:

The injunction granted herein on the 28th day of December, 1892, against the defendants in this cause, appellees in this court, defend-

ants in error in the Supreme Court of the United States, and each and every of them be, and the same is hereby, continued in force upon the undertaking filed herein, executed by the appellant, as principal, and J. T. Brooks, J. L. Bradley, and John P. Frenzel, as sureties, February 13, 1893, which said undertaking is now affirmed by the court to the extent and upon the conditions following, to wit:

The appellees herein, defendants in error in the Supreme Court of the United States, and each and every of them are hereby restrained and enjoined from collecting or attempting to collect from the plaintiff in error or out of any property of plaintiff in error the amounts claimed as taxes for the year 1891, mentioned in the
394 complaint herein and claimed to be payable to and collectible by the respective counties, cities, towns, and townships of which the defendants, appellees and defendants in error, are respectively treasurers and tax collectors during the period of thirty days from the date of the judgment of affirmance herein, and in case the said Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company shall have filed in the office of the clerk of the Supreme Court of the United States within said thirty days its transcript of the record on said writ of error, then said injunction to remain in force until the final decision and decree of the Supreme Court of the United States upon the writ of error herein.

SILAS D. COFFEY, *C. J.*

395 And afterwards, to wit, on the 21 day of February, 1893, the same being the 74 judicial day of the November term, 1892, of said supreme court, came again the parties, by their respective attorneys, and, the court being sufficiently advised in the premises, it is now considered and ordered that the clerk of this court sign the writ of error from the Supreme Court of the United States herein, and that a citation be issued on said writ of error to the defendants in error herein, and thereupon Andrew M. Sweeney, Esq., the clerk of said supreme court, signed the writ of error from the Supreme Court of the United States, and Hon. Silas D. Coffey, the chief justice of this court, signed the citation to the defendants in error issued on said writ of error, and thereupon the said chief justice took and approved the cost bond of the plaintiff in error on said writ of error, which said writ of error, cost bond, and citation were thereupon filed by the plaintiff in error, by its attorneys, in the office of the clerk of said supreme court, said writ of error, cost bond, and citation being in the words and figures following, to wit.

SILAS D. COFFEY, *C. J.*

396 UNITED STATES OF AMERICA:

The President of the United States of America to the supreme court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea and an appeal which is in the said supreme court of Indiana, before you, between The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company and Victor M. Backus,

as treasurer of Marion county, Indiana; J. B. Brewer, whose full Christian name is unknown, as treasurer of Southport, Marion county, Indiana; Thomas McCay, as treasurer of Lake county, Indiana; Simeon S. Bosserman, as treasurer of La Porte county, Indiana; Allen W. Reynolds, as treasurer of Porter county, Indiana; Andrew O. Castleman, as treasurer of Starke county, Indiana; Joseph D. Vurpillar, as treasurer of Pulaski county, Indiana; Charles L. Woll, as treasurer of Cass county, Indiana; E. B. Thomas, whose full Christian name is unknown, as treasurer of Royal Centre, Cass county, Indiana; George W. Hoffman, as treasurer of the city of Logansport, Cass county, Indiana; H. F. Small, whose full Christian name is unknown, as treasurer of Walton, Cass county, Indiana; Hiram A. B. Moorhous, as treasurer of White county, Indiana; George Burkit, as treasurer of Burnettsville, White county, Indiana; Daniel Boshour, as marshal of Monticello, White county, Indiana; E. B. Dibble, whose full Christian name is unknown, as treasurer of Walcott, White county, Indiana;
397 J. R. Casto, whose full Christian name is unknown, as marshal of Reynolds, White county, Indiana; Marcus H. Hemphill, as treasurer of Jasper county, Indiana; G. B. Clark, whose full Christian name is unknown, as treasurer of Remington, Jasper county, Indiana; Samuel A. Martindale, as treasurer of Newton county, Indiana; Amos A. Covalt, as treasurer of Howard county, Indiana; W. A. Markland, whose full Christian name is unknown, as treasurer of the city of Kokomo, Howard county, Indiana; James K. Armstrong, as treasurer of Tipton county, Indiana; A. F. Swoveland, whose full Christian name is unknown, as treasurer of Windfall, Tipton county, Indiana; William C. Barnard, as treasurer of Hancock county, Indiana; Thomas E. Valentine, as treasurer of Johnson county, Indiana; Frank McCullough, as treasurer of Franklin, Johnson county, Indiana; William Dark, as marshal of Edinburgh, Johnson county, Indiana; William J. May, as treasurer of Bartholomew county, Indiana; A. L. Bateman, whose full Christian name is unknown, as treasurer of Elizabethtown, Bartholomew county, Indiana; Richard Carter, as treasurer of the city of Columbus, Bartholomew county, Indiana; William Wiseman, as treasurer of Jonesville, Bartholomew county, Indiana; Frank Brodhicker, as treasurer of Jackson county, Indiana; E. Hahlbrand, whose full Christian name is unknown, as treasurer of Seymour, Jackson county, Indiana; Hugh Colvin, as treasurer of Scott county, Indiana; John A. Jenkins, as treasurer of Clark county, Indiana; W. P. Veasey, whose full Christian name is unknown, as treasurer of the city of Jeffersonville, Clark county, Indiana; Levi H. Scott, as treasurer of Floyd county, Indiana;
398 Jacob Best, as treasurer of the city of New Albany, Floyd county, Indiana; Daniel H. Demarre, as treasurer of Jefferson county, Indiana; L. M. Robinson, whose full Christian name is unknown, as treasurer of the city of Madison, Jefferson county, Indiana; Charles B. Curtis, as treasurer of Jennings county, Indiana; A. E. Rust, whose full Christian name is unknown, as marshal of Vernon, Jennings county, Indiana; D. Reeder, whose full Christian

name is unknown, as treasurer of the city of North Vernon, Jennings county, Indiana; Jacob H. Thomas, as treasurer of Shelby county, Indiana; Robert Montgomery, as treasurer of the city of Shelbyville, Shelby county, Indiana; Thomas A. Jones, as treasurer of Rush county, Indiana; Paul Kerr, as treasurer of the city of Rushville, Rush county, Indiana; William N. Young, as treasurer of Fayette county, Indiana; William P. Cook, as treasurer of Wayne county, Indiana; Martin L. Stratton, as treasurer of the city of Richmond, Wayne county, Indiana; M. C. Jay, whose full Christian name is unknown, as tax collector of Cambridge City, Wayne county, Indiana; John Hayes, as treasurer of Jay county, Indiana; I. W. St. John, whose full Christian name is unknown, as treasurer of Dunkirk, Jay county, Indiana; George W. Veal, as treasurer of Randolph county, Indiana; William N. McCullough, as marshal of Ridgeville, Randolph county, Indiana; John G. Grahs, as treasurer of Union City, Randolph county, Indiana; Albert W. Saint, as treasurer of Henry county, Indiana; John R. Page, as treasurer of Madison county, Indiana; William A. Fulton, as treasurer of the city of Anderson, Madison county, Indiana; Azro H. Wilkinson, as treasurer of Miami county, Indiana; C. E. Hiatt, whose full Christian name is unknown,
399 as treasurer of Xenia, Miami county, Indiana; Joseph H. Parker, as treasurer of Grant county, Indiana; M. McCrae, whose full Christian name is unknown, as treasurer of the city of Marion, Grant county, Indiana, and John P. McGeath, as treasurer of Blackford county, Indiana, the validity of the act of the legislature of Indiana, approved March 6, 1891, concerning taxation is drawn in question and the decision of said supreme court of Indiana is in favor of the validity of said statute, and because a manifest error hath happened, to the great damage of the said The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington thirty days after the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of the circuit court of the United States for the district of Indiana, this 24th day of February, A. D. 1893.

NOBLE C. BUTLER, *Clerk.*

400 In the Supreme Court of the United States.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY, Plaintiff in Error,
vs.
VICTOR M. BACKUS and Others, Defendants in Error.

We undertake to pay all costs taxable and chargeable to the plaintiff in error herein.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY.
SAMUEL O. PICKENS, *Att'y.*
J. P. FRENZEL.

401 UNITED STATES OF AMERICA:

To Victor M. Backus, as treasurer of Marion county, Indiana; J. B. Brewer, whose full Christian name is unknown, as treasurer of Southport, Marion county, Indiana; Thomas McCay, as treasurer of Lake county, Indiana; Simeon S. Bosserman, as treasurer of La Porte county, Indiana; Allen W. Reynolds, as treasurer of Porter county, Indiana; Andrew G. Castleman, as treasurer of Starke county, Indiana; Joseph D. Vurpillar, as treasurer of Pulaski county, Indiana; Charles L. Woll, as treasurer of Cass county, Indiana; E. B. Thomas, whose full Christian name is unknown, as treasurer of Royal Centre, Cass county, Indiana; George W. Hoffman, as treasurer of the city of Logansport, Cass county, Indiana; H. F. Small, whose full Christian name is unknown, as treasurer of Walton, Cass county, Indiana; Hiram A. B. Moorhous, as treasurer of White county, Indiana; George Burkit, as treasurer of Burnettsville, White county, Indiana; Daniel Boshour, as marshal of Monticello, White county, Indiana; E. B. Dibble, whose full Christian name is unknown, as treasurer of Wolcott, White county, Indiana; J. R. Casto, whose full Christian name is unknown, as marshal of Reynolds, White county, Indiana; Marcus H. Hemphill, as treasurer of Jasper county, Indiana; G. B. Clark, whose full Christian name is unknown, as treasurer of Remington, Jasper county, Indiana; Samuel A. Martindale, as treasurer of Newton county, Indiana; Amos A. Covalt, as treasurer of Howard county, Indiana; W. A. Markland, whose full Christian name is unknown, as treasurer of the city of Kokomo, Howard county, Indiana; James K. Armstrong, as treasurer of Tip-
402 ton county, Indiana; A. F. Swoveland, whose full Christian name is unknown, as treasurer of Windfall, Tipton county, Indiana; William C. Barnard, as treasurer of Hancock county, Indiana; Thomas E. Valentine, as treasurer of Johnson county, Indiana; Frank McCullough, as treasurer of Franklin, Johnson county, Indiana; William Dark, as marshal of Edinburgh, Johnson county, Indiana; William J. May, as treasurer of Bartholomew county, Indiana; A. L. Bateman, whose full Christian name is unknwn, as treasurer of Elizabethtown, Bartholomew county, Indiana; Richard Carter, as treasurer of the city of

Columbus, Bartholomew county, Indiana; William Wiseman, as treasurer of Jonesville, Bartholomew county, Indiana; Frank Brodhicker, as treasurer of Jackson county, Indiana; E. Hahlbrand, whose full Christian name is unknown, as treasurer of Seymour, Jackson county, Indiana; Hugh Colvin, as treasurer of Scott county, Indiana; John A. Jenkins, as treasurer of Clark county, Indiana; W. B. Veasey, whose full Christian name is unknown, as treasurer of the city of Jeffersonville, Clark county, Indiana; Levi H. Scott, as treasurer of Floyd county, Indiana; Jacob Best, as treasurer of the city of New Albany, Floyd county, Indiana; Daniel H. Demmaree, as treasurer of Jefferson county, Indiana; L. M. Robinson, whose full Christian name is unknown, as treasurer of the city of Madison, Jefferson county, Indiana; Charles B. Curtis, as treasurer of Jennings county, Indiana; A. E. Rust, whose full Christian name is unknown, as marshal of Vernon, Jennings county, Indiana; D. Reeder, whose full Christian name is unknown, as treasurer of North Vernon, Jennings county, Indiana; Jacob H. Thomas, as treasurer of Shelby county, Indiana; Robert Montgomery, as treasurer of the city of Shelbyville, Shelby County, Indiana;
403 Thomas A. Jones, as treasurer of Rush county, Indiana; Paul Kerr, as treasurer of the city of Rushville, Rush county, Indiana; William N. Young, as treasurer of Fayette county, Indiana; William P. Cook, as treasurer of Wayne county, Indiana; Martin L. Stratton, as treasurer of the city of Richmond, Wayne county, Indiana; M. C. Jay, whose full Christian name is unknown, as tax collector of Cambridge City, Wayne county, Indiana; John Hayes, as treasurer of Jay county, Indiana; I. W. St. John, whose full Christian name is unknown, as treasurer of Dunkirk, Jay county, Indiana; George W. Veal, as treasurer of Randolph county, Indiana; William N. McCullough, as marshal of Ridgeville, Randolph county, Indiana; John G. Grahs, as treasurer of Union City, Randolph county, Indiana; Albert W. Saint, as treasurer of Henry county, Indiana; John R. Page, as treasurer of Madison county, Indiana; William A. Fulton, as treasurer of the city of Anderson, Madison county, Indiana; Azro H. Wilkinson, as treasurer of Miami county, Indiana; C. E. Hiatt, whose full Christian name is unknown, as treasurer of Xenia, Miami county, Indiana; Joseph H. Parker, as treasurer of Grant county, Indiana; M. McCrae, whose full Christian name is unknown, as treasurer of the city of Marion, Grant county, Indiana, and John P. McGeath, as treasurer of Blackford county, Indiana, Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, thirty days after the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the
404 State of Indiana, wherein The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the opinion and judgment rendered against the

said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Silas D. Coffey, chief justice of the supreme court of Indiana, this twenty-fourth of February, in the year of our Lord one thousand eight hundred and ninety-three.

SILAS D. COFFEY,
Chief Justice S. C. I.

We hereby acknowledge service of the above citation this 24th day of February, A. D. 1893.

SOLOMON CLAYPOOL.
ALONZO GREEN SMITH,
Att'y Gen'l of Indiana.
JOHN W. KERN,
ALBERT J. BEVERIDGE AND
WILLIAM A. KETCHAM,
Att'ys for Def'ts in Error.

405 STATE OF INDIANA, }
Supreme Court. }

I, Andrew M. Sweeney, clerk of the supreme court of Indiana, certify the above and foregoing to be a true and complete transcript of the record of proceedings had, papers filed (excepting points and authorities for oral argument and briefs), motions decided, rulings made, opinion delivered, judgment rendered, assignment of errors for United States Supreme Court, injunction order, injunction bond, and all decrees and orders entered in the supreme court of Indiana in the above-entitled cause; also the original writ of error from the United States Supreme Court to the supreme court of Indiana and the original citation to the defendants in error and acknowledgment of service thereof.

Which said transcript, annexed to and hereby returned, together with said original writ of error and original citation, I hereby certify as and for my full return to said writ of error.

In witness whereof I have hereunto set my hand and affixed the seal of said supreme court of Indiana, at the city of Indianapolis, this 24th day of February, A. D. 1893.

[Seal Supreme Court State of Indiana, MDCCCXVI.]

ANDREW M. SWEENEY,
Clerk of Supreme Court of Indiana.

Endorsed on cover: Case No. 15,269. Indiana supreme court. Term No., 1299. The Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, plaintiff in error, *vs.* Victor M. Backus, as treasurer of Marion county, Indiana, *et al.* Filed February 27th, 1893.